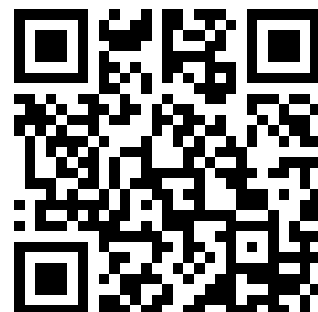
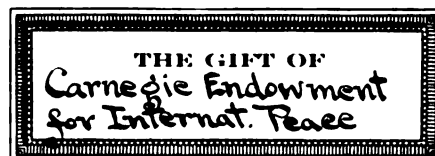
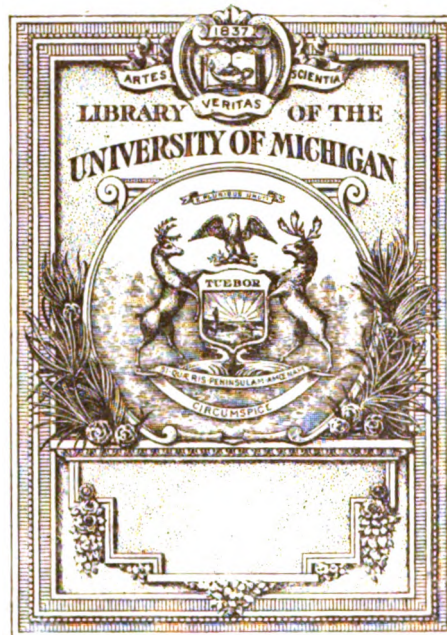

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THE
CLASSICS OF INTERNATIONAL LAW

GENERAL EDITOR OF THE SERIES

JAMES BROWN SCOTT

Member of the Institute of International Law

Secretary of the Carnegie Endowment for International Peace

De Bello, De Represaliis et De Duello

BY GIOVANNI DA LEGNANO

EDITED BY THOMAS ERSKINE HOLLAND

PREFACE OF THE GENERAL EDITOR

THE Carnegie Institution of Washington has undertaken the republication of the leading classics of International Law.

One reason for the undertaking is the difficulty of procuring the texts in convenient form for scientific study; the libraries in the United States have been searched with the result that few of the earlier works were to be found. Another reason is that some of the works selected for republication have never been translated into English. The American publicist is therefore at a disadvantage in consulting works of admitted authority, and when found they are, as it were, sealed books to all but trained Latinists. The specialist is thus forced to rely upon summary statements and references to them to be found in treatises on International Law, or is driven to examine them in European Libraries, often a difficult task, while the general reader is practically barred from the stores of knowledge locked up in the earlier works on the Law of Nations. The same difficulty exists in Latin America, Japan, and in a lesser degree in many European countries.

Eminent publicists, European and American, who have been consulted as to the usefulness of the plan to republish the Classics, have endorsed the project and have pledged their personal co-operation. The works to be included in the series have not only been approved but suggested by them, so that the undertaking is international in scope, in selection, and in execution.

The underlying principle of selection has been to reissue those works which can be said to have contributed either to the origin or to the growth of International Law, and the term classic has been used in the broad rather than in the narrow sense, so that no work will be omitted which can be said to have contributed to the origin or growth of the Law of Nations. The masterpieces of Grotius will naturally be the central point in the series, but the works of his leading predecessors and successors will likewise be included. The text of each author will be reproduced photographically, so as to lay the source before the reader without the mistakes

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which might creep into a newly-printed text. In the case of the early authors the photographed text will be accompanied by a revised text whenever that course shall seem desirable. An Introduction will be prefixed to each work, giving the necessary biographical details and stating the importance of the text and its place in International Law; tables of errata will be added, and notes deemed necessary to clear up doubts and ambiguities or to correct mistakes in the text will be supplied. Variations in successive editions of the text published in the author's lifetime will be noted, but little or nothing in the nature of historical commentary will be furnished.

Each work will be accompanied by an English version made expressly for the series by a competent translator.

It is hoped that the series will enable general readers as well as specialists to trace International Law from its faint and unconscious beginnings to its present ample proportions and to forecast with some degree of certainty its future development into that law which Mirabeau tells us will one day rule the world.

The present volume, containing the tractate by Legnano, entitled *De Bello, De Represaliis et De Duello*, written in 1360, is edited by the distinguished publicist Thomas Erskine Holland, from an original manuscript discovered by him at Bologna, dating apparently from the lifetime of the author.

JAMES BROWN SCOTT.

Washington, D. C., February 19, 1917.

TRACTATUS

De Bello, De Represaliis et De Duello

by

Giovanni da Legnano

I. U. D.

Professor of Civil and Canon Law in the University of Bologna

EDITED BY



THOMAS ERSKINE HOLLAND

One of His Majesty's Counsel

I. C. D. Bologna and Oxford

Sometime Professor of International Law in the University of Oxford

Late President of the Institute of International Law



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INTRODUCTION

THE work of Legnano, now for the first time printed in its integrity, was the earliest attempt to deal, as a whole, with the group of rights and duties which arise out of a state of War.

No one will be surprised to find that the author, although hailed by his contemporaries as "a second Aristotle," foremost in every branch of learning, was far from sharing in the clear-cut views upon the scope and nature of the "laws of war" to which international jurists, after more than five centuries of subsequent discussion, have at length attained. He includes in his treatise much that would now be regarded as belonging to dogmatic theology, to moral philosophy, or to the code of honour, and relies in support of his statements upon quotations from the Bible, from the *Corpus Iuris Civilis*, the *Corpus Iuris Canonici*, and the Feudal Customaries, which, at the present day, would be treated as irrelevant.

The interest of the book is, indeed, largely due to its remoteness from modern conceptions. It marks the *terminus a quo* from which the literature of the subject had to start, in order to arrive at the *terminus ad quem* which has so far been reached. In the progress of the centuries, and thanks to the labours of a long succession of great writers and statesmen, the Law of War, in common with the rest of International Law, has been disentangled from theology, ethics, the legislation of Justinian, the precepts of the canonists, and feudalism, all of which usefully contributed to its earlier development, and has been placed upon its true foundation, the consent of the states com-



posing the "Family of Nations," as evidenced by consistent courses of conduct, or by generally accepted conventions.* After these preliminary observations, we may proceed to a detailed account of Legnano's life and writings.

I

A Biography of the Author.

It was probably as early as the thirteenth century that a family deriving its name from the small town of Legnano became resident in the neighbouring great city of Milan, where it continued to be of importance for several centuries.† It was there that, early in the fourteenth century, Giovanni da Legnano (Iohannes de Lignano) first saw the light. His father, Giacomo, bore the title of Conte degli Oldrendi.

The young Giovanni, after studying philosophy and the liberal arts, and paying some attention to medicine, as also to astrology, in which he always continued to take much interest, devoted himself seriously, at Bologna, under the guidance of Paolo Liazari, to what was to be the work of his life; graduating eventually, at an earlier date than has been generally stated, as Doctor of both the Civil and the Canon Laws. There is reason to suppose that the subsequent residence of the "Milanese" Legnano at the University town was not unconnected with the change which took place in the government of Bologna in the year 1350, when the Pepoli family, wearied out by the hostility of the citizens, whom they had oppressed, and of the Pope, whose rights, acknowledged by Taddeo Pepoli ten years previously, they had persistently ignored, were glad, in consideration of a payment of 220,000 gold florins, to part with the "Signoria" to Giovanni Visconti, Archbishop of Milan.‡ In any case, it is in 1350, when Legnano is first authentically heard of, that we find him acting under the authority of the Visconti as member of a commission for the recall of citizens who had been banished from Bologna by the preceding régime, and as entitled, under the same authority, to receive an annual salary of thirty-seven florins, sixteen solidi, for a year's lectures. He

* On all this, further remarks will be found in part III of this Introduction, p. xxxi.

† See the pedigree at p. xviii *infra*.

‡ Cf. Filippo Bosdari, *Giovanni da Legnano*, Bologna, 1901, p. 1.

is already described as a "Legum Doctor." * In the following year he is described as "Doctor Utriusque Iuris," and was duly elected by the University to a Readership in Canon Law at a salary of sixty lire. In 1355 he was employed in missions to Venice and elsewhere,† and in 1358 already occupied the post, which he held for many years afterwards, of Advocate for the Franciscan Convent.‡ Though a Lecturer, he does not appear to have been a full Professor till 1360, when he succeeded to the chair of Civil Law vacated by Spinelli, becoming Professor of Canon Law a few years later.

Legnano's first literary effort seems to have been of an astrological character, treating of a conjunction of Jupiter and Saturn.§ It was doubtless, however, at an early date that he began to write those copious commentaries upon the *Decretum*, Decretals and Clementines, of which subsequent canonists speak somewhat slightly.|| But his great reputation rests more largely upon the important part which he played in public affairs, and upon those of his writings which deal, from a scientific point of view, with questions, suggested by the events of his own time, as to the respective rights of the Popes and Emperors; the relations between the civil and ecclesiastical powers generally; the special relations between the two powers in the cities of the Romagna, notably in Bologna; the validity of the election of Pope Urban VI; and the rules which ought to govern the wars by which Italy was, in his days, so constantly devastated.

The story of Legnano's activity, practical and literary, with reference to these questions, falls naturally into three chapters,

* Ibid., Appendices I and II. In 1352 his salary for lectures on the *Decretum* is fifty librae. In 1353 he is to receive the same sum for lectures on the *Sext*, and, by order of Archbishop Visconti, two hundred florins for lectures on the *Decretum*. Ibid., Appendices III, IV, V.

† Ibid., Appendix VI.

‡ Fantuzzi, V, p. 28.

§ See *infra*, p. xxi, in Part II of this Introduction, treating of the writings of Legnano.

|| e. g. Cardinal Zabarella, in his commentary on the Clementines, after mentioning various previous commentators, goes on to say: "Subinde Io. de Lignano, dominus meus, multos ex praemissis in unum collegit, quos saepe nimium decurtavit. Sed, quod magis improbat a compluribus, non apto retulit ordine, ita ut a paucis eius lectura commendetur. Et huic diligentia defuit non probitas. Fuit enim omnium sui temporis longe princeps." Imola, another pupil, is quoted to the same effect by Oudinus and Pancirolus. Cf. Schulte II, p. 257.

covering respectively : (1) the reigns of Popes Innocent VI and Urban V (1352-70) ; (2) the reign of Gregory XI (1370-8) ; (3) the earlier years of the reign of Urban VI (1378-83). By all these Popes he was held in great esteem.

(1)

The misgovernment of Bologna by Giovanni Visconti da Oleggio, on behalf of Archbishop Giovanni Visconti, whose son he was reported to be, had led to negotiations, ending in an arrangement by which Pope Clement VI, in the last year of his life (1352), had agreed that the Visconti should remain in power at Bologna for twelve years. Oleggio had continued to act on their behalf, but in 1356 had declared himself to be independent of them. By the year 1360, however, his position had become intolerable. He was hated by the citizens, and was alarmed to hear that Barnabo Visconti was preparing a large army to expel him from the city. He resolved, as the readiest way of escape from his difficulties, to hand the place over to the ecclesiastical power, and accordingly sent messengers to Cardinal Albornoz, who had already reduced much of the Romagna to obedience to the Pope, and was now marching northwards from Rome, offering, on terms favourable to himself, to surrender Bologna to the Cardinal, as being rightfully church property.

Albornoz, after ascertaining that Innocent VI considered the arrangement made by his predecessor, although it would have still had four years to run, to be no longer in force, accepted Oleggio's offer, and sent his nephew to take possession of the city, into which he made his own state entry on the first of October. On January 20 of the following year the forces of Barnabo Visconti were beaten off in a great battle outside the walls. A subsequent defeat induced Barnabo, in return for certain concessions, to surrender to the Pope the Visconti pretensions over Bologna.

So much it has been necessary to say of the events of 1360 in order to explain the genesis of the work now reproduced, for it was in that year that Legnano composed, or more probably only completed, his book *De Bello*, and presented it to Albornoz, with a very fanciful dedicatory preface, probably after the Cardinal's triumphal entry into the city.* As so presented, the work seems to have been

* Or, possibly, while Albornoz was waiting with his army, till he could receive from Avignon a reply to his inquiry as to the continuing force of the agreement of 1352.



entitled *De Civitate Bononiæ et de Bello*. Its composition was suggested, as the author tells us, by the imminence of an attack upon the city by a powerful army, doubtless that of Barnabo Visconti. While submitting what he has written to the better judgement of the learned, Legnano thinks that it may be found a useful exercise for students.*

In the Preface he touches upon six (?) episodes in the rebellion of Bologna against the Papal power, occurring between the years 1350 and 1360, stating his intention to deal with them in three essays, to be entitled respectively "De Marte," "De Iove," and "De Saturno." He has now composed as the first of these essays, the treatise "De Bello," and hopes hereafter to deal in the second, "De Iove," with the Church and its government, and in the third, "De Saturno," with the Empire, especially in respect of its dominion, ecclesiastical and temporal.†

The esteem in which Legnano was held by Urban V may be gathered from Bulls of 1364, 1369, and 1370,‡ granting lands to him, and ordering additions to his salary. The Pope also made him a present of a handsome set of robes. Not unnaturally, Legnano testified his admiration for Urban in an oration delivered in 1371, which is still extant. It is interesting to find him in 1366 purchasing from the executors of his predecessor, Spinelli, a lecture-room, with the Professor's chair and benches for students, complete.§ Two years later, the dignity of Count Palatine was conferred upon him by the Emperor Charles V.||

(2)

Another chapter of Legnano's life opens, and closes, with the Pontificate of Gregory XI (1370-8), during which he was largely occupied with maintaining a good understanding between Bologna and the Papal See. In 1371 we find him employed in drawing the deeds conveying a Pepoli palace to the Pope for the reception of his newly-founded "Collegium Gregorianum;" and in January, 1376, he was acting as advocate in a suit between a Convent and a Hospital.¶

* For a detailed account of the work, see Part III of this Introduction.

† These promises were, in substance, fulfilled in works mentioned in Part II of this Introduction, *infra*, at pp. xxii-xxviii, viz. the *De Fletu Ecclesiæ* and the *De Iuribus Ecclesiæ in civitatem Bononiæ*. Cf. Speranza, *Alberico Gentili*, 1910, pp. 31, 37.

‡ See them in Fantuzzi, *Notizie*, V, p. 30.

§ Also houses in the parish of S. Giacomo dei Carbonesi. Fantuzzi, V, p. 29.

|| The Bull is set out in Bosdari, p. 75.

¶ Cf. Bosdari, pp. 37 and 97.



On March 19 of that year, Bologna, exasperated by the conduct of the Legate, Cardinal G. dei Noelletti, and emulous of the resistance of Florence to the ecclesiastical power, proclaimed itself a Republic and adopted, amid scenes of wild enthusiasm, a red flag embroidered with the word *Libertas*, which word figures in the city arms to this day. Gregory retaliated by sending an army to devastate the neighbourhood; whereupon Legnano, together with Girolamo d'Andreae, was despatched to Avignon to explain matters. This he did so effectually that the Pope, convinced that the rebellion had been caused by the misgovernment of his legate, pardoned Bologna, which was, however, not inclined to accept his proffered clemency. It was probably then that Legnano composed his longest work, *De Iuribus ecclesiæ in civitatem Bononiensium*, to show that *in temporalibus*, as well as *in spiritualibus*, the papal authority was supreme over the cities of the Romagna.* In 1377 he was again sent to negotiate, on behalf of the city, with Gregory, who had now once more adopted Rome as the seat of the government of the Church, and was spending the summer at Anagni. Legnano's efforts were this time crowned with complete success. Under an arrangement to last five years, the city returned to its allegiance to the Pope, to whom it was to pay 10,000 golden florins annually. The Pope, on his side, granted several petitions of the citizens, with one of which, asking for a Vicar "che fosse amatore della città," he complied by appointing to that high office Giovanni da Legnano.† This was on December 13, 1377, and the event was celebrated by processions which lasted three days.‡ So great was the popularity of the new Vicar that, on January 15 of the following year, the Council of 400, by 363 against 6 votes, conferred upon him and his descendants the citizenship of Bologna, and this event was again joyously celebrated.§

* In this work Gregory is spoken of as *hodiernus*. Much space is devoted to a refutation of the Imperialist views of Dante, as also to the many erroneous meanings given to the word *Libertas*. For a full account of its contents, with copious extracts, see Luigi Rossi, *Dagli Scritti inediti di Giovanni da Legnano*. Bologna, 1898, pp. 20-51. The work contains allusions to the treatise *De Bello*, *ibid.*, p. 25.

† Alidosi, p. 367. The wish of the citizens as to a Vicar is somewhat differently recited in the papal grant, as having been for one "qui sit zelator status ecclesiæ et domini nostri et gratus populo Bononiæ." Bosdari, App., p. 105.

‡ Ghirardacci, *Hist. Bon.*, II, p. 368.

§ The terms of the decree are printed, from the archives, in Ghirardacci, *Ibid.* p. 369.

(3)

With the death of Gregory XI, on March 27, 1378, and the election of Urban VI, on April 8, begins another, and the last, chapter of the story of Legnano's life. The French Cardinals, who formed a great majority of the sacred College, becoming dissatisfied with their choice, declared the election void, as having been induced by the threatening attitude of the Roman populace, and seceded to Anagni, with a view to a new conclave. A strong letter of remonstrance* addressed by Legnano, on August 18, to Cardinal Peter de Luna (afterwards anti-pope, as Benedict XIII) failed to prevent the election, on September 30, of the first of a long line of anti-Popes, in the person of Clement VII; thus inaugurating the "Great Western Schism."

Legnano, a consistent supporter of the validity of the former election, was thereupon sent by his fellow-citizens to salute the rightful Pope at Rome, and to ask for three favours from him. These, including the creation of a Bolognese Cardinal, were all granted, and Legnano returned the bearer of two red hats, which, on behalf of Urban, he presented amid scenes of great rejoicing, one to Caraffa, the Archdeacon of the city, and the other to Bishop Mezzavacca, on their promotion to the Cardinalate. The oration made by him is still extant.† It was, perhaps, on the occasion of this first embassy that the Pope declared that he would have retained Legnano at Rome, but that in the absence of so great a man the schools of Bologna would have been left desolate. Urban is said also to have offered to make him a Cardinal, provided that his wife would retire to a convent, which she declined to do.‡ In 1379 Legnano completed a tractate in defence of Urban's election, entitled *De Fletu Ecclesiæ*, which the Pope forwarded to the University of Paris, where it provoked various replies, among them one from the Abbot of St. Vedast's, entitled *De planctu bonorum*, consisting of a dialogue between a doctor of

* Partially printed by Raynaldus, t. xvii, sub anno 1378, No. 30. It mentions an astrological warning of an approaching schismatical movement, which had been previously sent by the writer to Pope Gregory. Cf. Fantuzzi, V, p. 35.

† See extracts in Oudin, p. 1073, who refers to the Codice Colbertino, t. iii, No. 815.

‡ A. da Budrio, on the "De conversatione coniugatorum," Decret. iii, 32, quoted by Fantuzzi, V, p. 34. Legnano's reply to this offer is set out in Pancirolus, "nolle se sanguinem pauperibus destinatum bibere, sed ex sudore manuum victurum," &c.

Bologna and one of Paris. A second tract, *Pro Urbano*, was said by Legnano's opponents to contain things "valde venenosæ, licet superficiales et non reales." * In what seems to have been an independent treatise, the *De multiplici genere monarchiæ*, there occurs an interesting reference to the early work *De Bello*. Legnano says that he had in that work treated of war generally, and of its species, without discussing the manner of practically carrying it on, which he now proceeds to do. †

The author of these Treatises, who was, not unnaturally, "molto caro" to the Pope, was, in 1380, again sent on an embassy to him, together with Baldus; and a curious report is preserved of a conversation which took place between these two great jurists, while stopping at an inn in the neighbourhood of St. Peter's, upon the subject of the papal election. ‡ Legnano's services were acknowledged in 1381 by a renewal for one year of his nearly expired appointment as the Pope's Vicar in Bologna. He was once more at Rome as Ambassador on behalf of his fellow citizens in 1382, but died, after a short illness, at his own house, on February 16 of the year following. Whether or no he fell a victim to the plague, which in that year carried off so many of his distinguished colleagues, is not certain.

On February 18 Legnano was honoured by a State funeral, attended—all shops remaining closed—by Cardinal Caraffa, by the city authorities, and by his colleagues in the Professoriate. § He was buried in the Church of St. Domenico, where his fine monument, the work of two celebrated Venetian sculptors, had been erected in his life-time, "in St. Domenico's chapel, above the door on the right," || where it was still standing at the end of the eighteenth century. ¶ It has since sustained great injury, but portions of it may still be seen in the Museo Civico of Bologna. They have been somewhat arbitrarily combined, as will appear from the accompanying photograph.

* This is textually printed in Raynaldus, t. xvii, App. I.

† "Viso de politia tempore pacis conservanda, restat videndum de politia bellica," &c. Rossi, *Dagli Scritti inediti*, p. 58. An epitome of the whole treatise is given in pp. 51-9 of that work.

‡ Oudinus, p. 1074. Cf. Savigny, *Geschichte*, VI, p. 273.

§ It is even recorded that the doctors of Civil Law took part in the procession, although it was in honour of a Canonist. Fantuzzi, V, p. 37.

|| Pancirolus, p. 439.

¶ "Anche oggi esiste," wrote Fantuzzi, in 1786, V, p. 37, and Favolini, in 1797. On the monument, cf. Vassari, *Opere* I, p. 444; Bosdari, p. 80; and Cavazza, *Le Scuole dell' antico studio bolognese*, 1896, p. 102.



BIBLIOGRAPHY

1. The title of the second tract, *Pro Urbano*, was said by the author to be a play on words (*il volgo rimosa*). For the play on words, see below. It seems to have been an independent tract, but in the *manuscript*, there occurs an interesting reference to it. I am not sure that he had not at hand a list of its species, without discussing the question, which he now proceeds to do.¹

2. He dies, who was, not unnaturally, "a hoary old man." In 1380, again said on an emblem, "a hoary old man," and a curious report is preserved in the *manuscript* that he took pleasure in these two great artists, while he was in Rome in the night of the 1st of St. Peter's, upon the day of the election of the pope's servant. He acknowledged that he was a great admirer of his head, and appointed a doctor to give him a head. He was more at Rome a long time than he. His fellow citizens, in 1382, but died, after a short illness, at his own house, on February 10 of the year following. We do not know he fell a victim to the plague, which in that year carried off so many of his distinguished colleagues, is not certain.

3. On February 18, 1382, he was honoured by a State funeral, attended by all shops remained by Cardinal Crivelli, by the authorities, and by the citizens in the Profane. He was buried in the Church of St. Domenico, where his monument, the work of two celebrated Italian sculptors, has been erected in his honour. It is in St. Peter's chapel, above the door on the right, "a masterpiece of the end of the fifteenth century."² It is in Italy, but perhaps it may still be seen in Bologna. The monument has been somewhat arbitrarily given from the accompanying photograph.

¹ s. t. xlii, App. 6.

² *monumenti e statue di pittura*. An epitome of the whole treatise is

³ *V. p. 273*.

⁴ *Il nuovo libro di pittura*, p. 100.

⁵ *V. p. 273*.

⁶ *V. p. 273*; and *V. p. 273*.

⁷ *V. p. 273*; and *V. p. 273*.

⁸ *V. p. 273*.



THE PORTIONS OF LEGNANO'S TOMB NOW PRESERVED IN THE MUSEO CIVICO AT BOLOGNA

To face p. xvi

There can be no doubt that the group of listening scholars were on the left hand of the monument, balanced by a similar group on the right hand, the faces of both groups being upturned towards a bust of Legnano surmounting the whole. The inscription must have been placed below this central figure. The coat of arms, so often repeated, officially described as "Di rosso spaccato d'argento col leopardo illeonito d'oro ambulante verso il capo, ed un corallo di rosso verso la punta dello scudo," is supposed to have been that of the De Oldrendis. The inscription, as still fully legible to Fantuzzi, ran as follows :

Frigida mirifici tenet hic locus ossa Iohannis.
 Ivit in astriferas mens generosa domos.
 Gloria Legnani. Titulo decoratus utroque
 Legibus et sacro canone dives erat.
 Alter Aristoteles, Hippocras erat, et Tholomei
 Signifer, etherii noverat astra poli.
 Abstulit hunc nobis inopinæ sincopa mortis.
 Heu dolor. Hic mundi portus et aura iacet.
 Anno MCCCCLXXXIII Die
 XVI mensis Februarii.
 Hoc opus fecerunt Iacobellus et Petrus Paulus fratres.
 Ioanne Lignano Bononiæ docente.*

From Legnano's will, made on March 27, 1376, † before starting on his journey to Avignon, and from a long codicil made on February

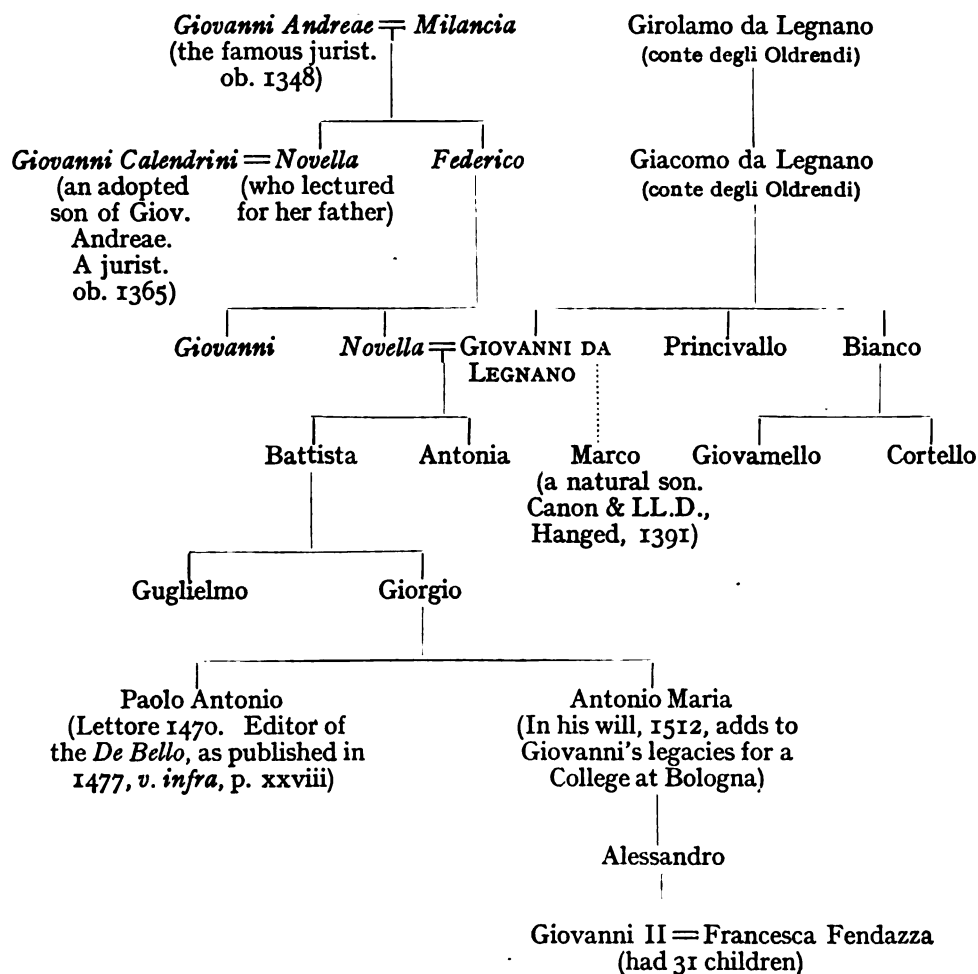
* These, not impeccable, Latin verses may be translated as follows : " This place holds the cold bones of wondrous John. His liberal intellect has departed to the starry habitations : all the glory of Legnano. He was enriched with degrees both in the civil and the canon laws. A second Aristotle, a Hippocrates was he, and equipped with Ptolemy's signs, he knew the stars of the sky. We were deprived of him by a stroke of unexpected death. Alas, the sorrow of it. Here lies the harbour and the breeze of the world. ✓

In the year MCCCCLXXXIII the
 16th day of February.

This work was executed by Iacobello and Pier Paolo brothers, while Giovanni Legnano was teaching at Bologna." The last two lines of the Latin are now almost illegible.

† He had married, before making the will of 1376, Novella, daughter of Federico (son of Giovanni) Andreae, by whom he then already had a daughter Antonia, and a son Battista. Novella survived him, and was one of his executors. Mistakes as to the identity of Novella are numerous, and it is perhaps still not quite clear whether she was the daughter of a son, or of an adopted son of the same name, of Giovanni Andreae.

15, 1383, the day before his death,* we learn many particulars as to the members of his family, and as to the considerable property left by him in Legnano and Milan, as well as in Bologna. In the case of his son Battista dying without issue, which did not happen, he left funds for a "Collegium studiosorum," with preferences for duly qualified candidates belonging to certain localities and families, which remind us of foundations nearer home. The following pedigree, constructed from various authentic sources, may serve for the identification of members of the family mentioned in this Introduction, or elsewhere :



* Both will and codicil are textually set out by Bosdari, App., Nos. XXV and XXVI. He is described in the Codicil as formerly of the chapel of S. Proculus, now of the chapel of S. Iacobus de Carbonensibus.

On law-suits which arose between the children of Guglielmo and Giorgio under the Will of Giovanni, see Pancirolus, *De claris legum interpretibus*. The Milan Legnani, publishers of the *De Bello* in 1514, claim relationship with the author. A Captain Alessandro Legnani, in 1587, enlarged the house near the church of S. Giacomo into a palazzo, which passed by the marriage of Teresa Legnani, in 1772,* to the Campeggi family, from whom it was purchased by the Pizzardi, and was eventually sold to the Railway.† Girolamo, the last of the Legnani family at Bologna, died in 1805. In 1750 Donato Legnani took the name Agucchi, and this branch of the family is still represented through females. Cf. Filippo Bosdari (who is thus descended) in his *Giovanni da Legnano*, 1901, pp. 53, 62; Rossi, *Scrittori Bolognesi*, 1888; Pancirolus, 1593; Alidosi, 1620; Ghirardaccius, 1669; Oudin, 1722; Argelati, 1745.

The following epitaph (perhaps only suggested) upon Paul Anthony Legnano, by Emilius Romanus, his contemporary, occurring in a codex of the fifteenth century, is cited by Fantuzzi: ‡

Lignani iuvenis Pauli monumenta supersunt
Consultum. poterant quanta decere senem.
Cura frequens studii vitam rapuitque deditque,
Hic cineres. Animus summa quietus habet.

Giovanni da Legnano, while enjoying the esteem and confidence of four Popes in succession, was also generally respected and beloved. He was especially dear to the people of Bologna, as "amatore della Repubblica e de' poveri." § Several writers enlarge upon his humility, at the time when, as Papal Vicar, he was practically "Signore di Bologna," in declining to take precedence of the Anziani or Gonfalonieri. "Anzi con grandissima modestia e riverenza sempre si mostrò humile e benigno a tutti in tutte cose, ascoltando le cause altrui con amorevole pazienza, virtù che veramente lo fecero grandemente essere amato." || He was, however, not inclined to put up with any unmerited slight, as appears from an often-repeated story

* On which see Verses in the *Bibliografia Bolognese*, II, § 10996.

† See Bosdari, who refers to a collection of Legnani papers preserved by the Malvezzi Campeggi family.

‡ IX, p. 140.

§ The vote of citizenship, set out in Bosdari, App. XVI, p. 111, recites the important services of Legnano to Bologna.

|| Ghirardacci, *Hist. Bonon.*, II, p. 368. Cf. Alidosi.



to the effect that, with a mind intent upon philosophical problems, he was frequently neglectful of his dress, which led to his being given the lowest place at a certain wedding party. He thereupon sent for a purple gown, which he proceeded to deposit on the seat which ought to have been his, exclaiming "You worship fine clothes, here you have them," and so left the room, while all the company blushed.*

For the vast reputation of Legnano, as teacher, writer, and man of action, it will suffice to call a few only of the many witnesses who speak of him as having been a universal genius, the glory of his age.

Iohannes Garzon, for instance, writing about 1450, after mentioning some of Legnano's merits, continues: "Hæc me in eam sententiam impellunt ut existimem ætatem illam Iohanne de Lignano nihil vidisse præstantius. Qui astrologiam atque oratoriam cum iuris civilis scientia coniunxisset, nullum me vidisse memini. Addo rerum humanarum peritiam."

"Alter Aristoteles sui temporis vocari promeruit. Andreas Siculus 'maximum et illustrem capitaneum sacrorum canonum, legum, et philosophiæ' vocavit eum," says Freherus, writing in 1558.

Somewhat later in the same century, Pancirolus writes: "Omnes disciplinas tenuisse creditus est, præterea divini humanique iuris scientiam. Philosophiæ naturalis disciplinæ, arti medicinæ etiam, et astronomiæ, antea incubuerat . . . interpretum iuris Pontificii princeps habitus est." †

With Gentili begins a more critical appreciation of our author. In his *De Iure Belli* (1598), l. i, ch. ii, speaking of the civil lawyers who have written upon his subject, he says: "Equidem præter Lignani paucula huius tractatus, et aliorum nonnulla sparsim, legi nihil, et ea non absque fastidio legi omnia. Sic sunt apta minus, minusque splendida: ut præteream illud, esse in eorum libris quamplurimum non de bello, et de belli iure adversus hostem, sed de re militari, et legibus cum cive et milite nostro." And Grotius, *De Iure Belli* (1625), Prolegomena, section 37, speaking of the earlier

* Pancirolus, p. 438.

† The MS. *Cronaca Bolognetti*, in the Biblioteca Comunale, goes so far as to say: "Era dottore in legge e in tutte le altre scienze del mondo, e si diceva che in quel tempo non si trovava uno pari a lui fra i Cristiani." Bosdari, p. 78:

theologians and jurists (mentioning Lignanus) who have treated of the subject, censures most of them for having mixed up and confused "sine ordine, quæ naturalis sunt iuris, quæ divini, quæ gentium, quæ civilis, quæ ex canonibus veniunt."

II

The Writings of Legnano.

The importance attached by his contemporaries to any expression of Legnano's views, whether didactic or controversial, is sufficiently attested by the rapid multiplication of all his works in manuscript copies, which can alone account for these having found their way to widely distant European libraries. Printing was, of course, unknown in Legnano's time, but in the following century not a few of his productions were by means of the new art made generally available.

The list of writings which follows is derived from many sources, and is fuller than that supplied by any single authority. Pains have been taken to make it as complete as possible, since it illustrates not only the career and character of Legnano, but also the movement of thought in the Italy of his day. Of only a few of these works can the composition be assigned to particular dates; it has therefore been thought best to group them here according to the subject-matter with which they deal.*

I. ASTROLOGICAL.

Figura delle grande Costellazione, ovvero Congiunzione di Saturno e di Giove nel segno dello Scorpione l'anno dall' Incarnazione di Christo

* Fantuzzi, *Scrittori Bolognesi*, t. v, p. 28, follows the order in which the writings occur in the Vatican MS. No. 2639.

MCCCLV, *a di xxii del mese d' ottobre, secondo le considerazione de messer Giovanni da Legnano, sopra quella dando el giudizio suo.* (MS. No. 343 in the Laurentian Library at Florence, according to the Abate L. Ximenes, in his work *Del vecchio e nuovo gnomone Fiorentino*, 1757.)

De Cometa, compiled in April, 1368, in which month the Comet appeared. (MS. Vatican 2639.)

Cf. the historical portions of the Preface to the *De Bello*, and much in Legnano's other writings.

2. THEOLOGICAL.

De Christo : De Deo : De Antichristo : De Angelis. (MS. Vatican.) Contains passages from Ovid and Virgil, and interprets astronomical occurrences as prophetic of the Incarnation.

Vigilium maiestatis divinæ, compositum per magistrum omnium scientiarum, etc., Io. de Lignano, beginning "Primo tractaturus de Deo Patre." (MS. at St. Mark's.) *

3. ON CANON LAW.†

Commentaries and Disputations upon the Decretum, Decretals and Clementines, &c. Of a Disputation on some Extravagantes of John XXII, it was said "est melius quam unquam fecit de iure Canonico." (MSS. are in the Cathedral Library at Padua, and in the Libraries of the Spanish College and of the Istituto at Bologna.)

4. SPECIAL TREATISES ON THE SAME.

De Interdicto ecclesiastico, dated 1359, "tempore interdicti generalis et suspensionis studii." (MSS. at the Vatican and at Turin.) Printed, Mediolani, without printer's name or date, together with the *De Censura*, with a note "Scriptus in Generali Concilio Basiliensi, per me Io. Tollenor de Dyedem, A.D. 1436." Also in the *Tractatus Tractatum* of 1549, t. xvi, fol. 245, and in that of 1584, t. xii, fol. 335.

* See Valentinelli's *Catalogue*, III, p. 42, and Fantuzzi.

† For a special account of Legnano's canonical writings, indicating the libraries in which MSS. of them respectively may be found, and which of them are accessible in print, see Schulte, *Geschichte des Canonischen Rechts*, ii, p. 257.

Tabula remissoria de Interdictis ecclesiasticis. Printed in *Tractatus Tractatum* of 1549, t. xvi, fol. 246, and of 1584, t. xiv, fol. 336.

De Censura ecclesiastica, dated 1361. (MS. at the Vatican, St. Germain, and Basel.) Printed at Milan (with the *De Interdicto*), also in *Tr. Tr.* 1549, t. xvi, fol. 227, and 1584, t. xiv, fol. 307.

De Beneficiorum ecclesiasticorum pluralitate, iussu domini Urbani V (circa 1365). Printed at Louvain by John of Westphalia, 1475 (a copy is at Lambeth); at Paris by Peter de Cæsaribus, M.A. and John Stol, 4to, s.d.; again at Paris in 1512, and at Milan in 1515. Also in *Tr. Tr.* 1549, t. xv, fol. 127, and 1584, t. xv, Pars ii, fol. 558.

De Horis Canonicis. Printed in *Tr. Tr.* 1549, t. xv, fol. 411, and 1584, t. xv, Pars ii, fol. 558. (Qu. whether at Rome, by Barthol. Guldinbeck, in 1475?)

De Celebratione Missae, Repetitio c. dignum, De Cele. Miss., Cle. (i. e. Clementinarum lib. III, Tit. xiv, c. 2). Printed at Pavia by Io. Ant. de Biret and Franciscus Ghyrardengus, 1488.

De Appellationibus. (MS. at University of Leipsic.)

De Arbore consanguinitatis. (MS. in the Vatican.)

5. ON CIVIL LAW.

De Permutatione.

De Emptione et Venditione ad certum tempus. (MS. at the University of Leipsic.)

6. RELATING TO BOLOGNA.

De Civitate Bononiæ et De Bello, 1360.

See p. xii, *supra*, and Part III of this Introduction, *infra*, p. xxvii.

De Iuribus ecclesiæ in civitatem Bononiæ (circa 1373). (MSS. in the libraries of the city of Bologna, and of St. Mark's, Venice.) See Valentinelli's *Catalogue*, III, p. 42, and extracts in Rossi, *Scritt. inediti*, pp. 25-51. It contains allusions to the *De adventu Christi*, *Somnium*, and notably to the *De Bello*, v. *supra*, p. xiii, n., *infra*, p. xxv.

Oratio, on delivery of the Red Hats in 1378. (MS. in Bibliothèque Nationale.) Extracts are printed by Oudinus, p. 371, and Raynaldus, t. xvii.

7. ON WAR, REPRISALS, AND THE DUEL.

It is not unlikely that before producing the work in which these three topics are treated in combination (see Part III, p. xxvii of this Introduction) Legnano had treated of each of them separately. He seems thus to have treated of "War" only, in his *De Civitate Bononiæ et de Bello* (ibid.).

The Biblioteca Comunale of Bologna possesses several MSS. of the *De Duello*, viz. MSS. 894 and 2115 of the seventeenth century, and, in the University Library (?), B. 1483 and B. 1470 (entitled "Iohannes de Lignano et Iacobus de Castillo De Duello"); B. 1483 and B. 1470 of the eighteenth century.

The *De Represaliis* was printed separately at Pavia by Christophorus de Canibus in 1484; and again, in the same place, in 1487, without a printer's name.

The *Tractatus peregrinus de Duello*, Ioh. de Lignano Mediolanensis, "nuper inventus in lucem per magistrum Io. de Lignano, eius agnatum," was printed "ad utilitatem posteriorum," by Ulrichus Sinzenzeler (as appears by his mark, and the letters V.S.) at Milan, s.d. 4to. It was reprinted, "Mediolani, apud Alexandrum Minutianum, impensis Ioh., Iacobi et fratrum de Lignano, A. D. 1508, fol."

For later reprints of the last-mentioned two works, see *infra*, p. xxix.

8. ON MORAL AND POLITICAL PHILOSOPHY.

De Amicitia, circa 1365. (MSS. at St. Mark's, at Turin, and at St. Peter's Coll., Cambridge.) Printed at Bologna, by Hugo de Rugeriis, in 1492. Also in *Tr. Tr.* of 1549, t. xvii, fol. 2, and of 1584, t. xii, fol. 227.

De Pace. (MS. in the Bibliothèque Nationale.)

De virtutibus generatim: "Circa circulos virtutum." (MSS., as also of the following treatises, at the Vatican and at St. Mark's.) *De iustitia*; *De vitiis religioni oppositis*; *De pietate*; *De observantia*; *De obedientia*; *De gratia*; *De retributione*; *De ingratitude*; *De fortitudine* (begins: "visio de Iustitia, videndum est de Fortitudine, et licet tractavimus de Bello, tamen adhuc reassumam ibi secundum tractatum de Temperantia"); *De continentia*; *In Aristotelis Politicorum lib. i, ii, iii*.*

* See Valentinelli's *Catalogue*, III, p. 42, and Rossi, *Scritt. inediti*, pp. 51-63.

De Multiplici genere Monarchiæ. (In the Venice MS.) Contains a reference to the *De Bello*. It discusses the *Politics* of Aristotle, and has something on naval warfare.*

Circulum Œconomiae. (In the Venice MS.) †

Circulum Politicorum. (In the Venice MS.) A commentary on Books I and II of Aristotle's *Politics*. ‡

9. ON THE GREAT WESTERN SCHISM.

Epistola ad Cardinalem de Luna, August 18th, 1378. (MSS. at the Vatican and in the Bibliothèque Nationale.) Partly printed by Raynaldus, t. xvii, Nos. 30–35.

De Fletu ecclesiæ (Tractatus pro Urbano), written in 1379. (MSS. at the Vatican and at St. Mark's.) Partly printed by Raynaldus, u.s., No. 38.

Pro Urbano tractatus secundus. (MS. in the Bibliothèque Nationale.) Printed by Raynaldus, t. xvii, Appendix.

10. Among the writings of Legnano preserved in a MS., No. 2639, of the Vatican Library, is a treatise with no title, commencing: ‡ “Audite somnium per quod vidi solem et stellas, Genes. xxxvii.” Citations from Levit. xix and Deuteron. xix immediately follow. The body of the work consists of a long dialogue between a *clericus* and a *miles* upon the respective prerogatives of the Pope and the Emperor. It is dedicated to the Pope, and ends: “somniatum MCCCLXXIII, nocte vi Feb., scriptum die x Martii.” §

This treatise has remained in manuscript. Not so a distorted version of it, which, since it is dedicated not to the Pope, as an argument in favour of Papal claims, but, at fulsome length, to King Charles V of France (1364–80), in support of lay governments, must have been put together, perhaps secretly, by its unknown writer, very shortly after the date of the original upon which it is

* See Valentinelli and Rossi, *ibid*.

† *Ibid*.

‡ From fol. 226.

§ So Fantuzzi, t. v, p. 43. This *Somnium* is a quite different work from the *Vigilium*, attributed to Legnano in Valentinelli's Catalogue of the Library of St. Mark's, t. iii, p. 42. See *supra*, p. xxii.

modelled.* It found its way into print, in both Latin and French, rather more than a century later, as the *Somnium Viridarii*, or *Le Songe du Vergier*.

In Latin we find : *Somnium. Aureus de utraque potestate libellus, temporalis et spiritualis, Somnium Viridarii nuncupatus*, formam tenens dialogi, in quo miles et clericus de ambarum iurisdictionum disputabant potestate. Cui Repertorium annectitur ab Ægidio Daurigny recollectum. Op. et diligentia Iacobi Pouchin, sumptibus vero et expensis Galioti Dupre, Parisiis, 4to, 1516.† This edition is reprinted as "ab auctore incerto," in the *Tractatus Tractatum* of 1549.‡

A slightly different text is printed by Goldast in his *Monarchia Romani Imperii* (1612).§ It is entitled *Philothei Achillini, consiliarii Regis, Somnium Viridarii, de iurisdictione regia et sacerdotali*. It commences : "Audite somnium quod vidi," Genes. xxxvii, &c., is dedicated to Charles V of France, and ends : "Liber Somnii Viridarii, cuius utilitas fuscus usque celebratur ad Indos, hic finem capit optatum."

There is no doubt that the attribution of the work to Filoteo Achillini (born in 1466 and died 1538), author of the poem *Il Viridario*, and founder of an Academy similarly entitled at Bologna,|| is a mere piece of mystification.

In French :

The earliest edition, entitled *Le Songe du Vergier*, "lequel parle de la disputation du clerc et du chevalier," is adorned with pictures, one of which represents a King (Charles V), on either side of whose throne are Queens, symbolical of the spiritual and temporal powers, another, a professor lecturing. It ends : "imprime par Jaques Maillet l'an mil. cccc quatre vintz et onze, le 20 jour de mars."

This edition is reprinted in the *Traitez des Droits de l'Eglise Gallicane*, MDCCXXXI.¶

Somewhat later appeared another edition of the *Songe du Vergier*, except in size identical with the former, and with the same illustrations, "imprime

* A MS. of it is said to exist in a catalogue, ending in 1468, of S. Sulpice in Bourges. See *Traitez*, as mentioned below.

† The Royal Privilege speaks of it as "nouvellement imprime." It was placed in the Index (ordered at the Council of 1544) where *viridarius* is mistakenly supposed to be the name of the writer.

‡ T. xiv, fol. 200-60, in double cols.

§ T. i, fol. 58-229. Goldast's Preface contains a discussion on the always disputed question of the authorship of the *Somnium*, and gives a long list of writers by whom it has been cited.

|| For this information as to the real Achillini, I am indebted to Professor A. Sorbelli, of Bologna.

¶ T. ii. Prefixed to this treatise is a Dissertation upon its authorship : "C'est un enigme," says the writer, "fort au-dessus de ma portée . . . je n'ai point chez moi le Sphinx, comme le disoit Ciceron." But he disbelieves in its attribution to Philippe de Maisières, and others. Like most of those who have dealt with the question, he seems never to have heard of Legnano.

a Paris par Le petit laurens, pour venerable homme Jehan petit, libraire, demeurant a Paris, en la rue St. Jacques, a l'enseigne du lyon d'argent," 4to, (1500). On the half-title is the device of Jehan Petit, a tree, supported by two monkeys.*



III.

The work now reproduced.

It was, as we have already seen, † in the year 1360, while Bologna was threatened with attack by the army of Barnabo Visconti, that Giovanni da Legnano composed, or more probably only completed, the treatise upon War, which he afterwards presented, with a dedicatory Preface, to Cardinal Alborno, entitling it *De Civitate Bononiæ et de Bello*. Whether, in this its original form, the treatise dealt with Reprisals and the Duel, as well as with War, is uncertain. There can, however, be little doubt that the author's essays upon all three topics were at some time or other combined by himself into one work, thenceforth known as his *Tractatus De Bello, De Represaliis et De Duello*. ‡

Of this work manuscripts are to be found in the following libraries: §

At *Bologna*, in the Biblioteca Comunale dell' Archiginnasio. MS.

B. 1393 is of the fourteenth century, approximately of

* Some copies of this edition bear "Jehan Alisot, libraire, demeurant a Angier."

† *Supra*, p. xii.

‡ For the separate histories of the Essays *De Represaliis* and *De Duello*, see *supra*, p. xxiv.

§ For much of what follows, as to manuscripts and editions, I am indebted to the kindness with which my enquiries have been answered by Librarians of the Bibliothèque Nationale at Paris, of the Biblioteca Apostolica Vaticana, of the Ambrosiana at Milan, of the R. Biblioteca Nazionale at Turin, but most of all to the Librarian of the Biblioteca Comunale dell' Archiginnasio di Bologna, Professor Albano Sorbelli, and to his learned colleague Professor Giuseppe Brini, who have been most helpful in many other ways to the present publication.

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the year 1390. A reproduction of this MS. occupies pp. 1-65 of the present volume. Also an eighteenth-century copy of the table of contents of the Vatican MS. 2639.

At *Rome*, in the Vatican Library. MS. Reg. Suec. 1873, Lat. No. 369 (2639), of the fifteenth century, contains, it seems, all three treatises, but omits much of the *Proæmium*.

At *Turin*, in the Biblioteca Nazionale, there is a MS., G. I. 17, of the fifteenth century, lacking the *Proæmium*. It is mutilated, breaking off near the end of *Represaliæ*.

At *Paris*, in the Bibliothèque Nationale, is a MS., No. 12467 (from the Bibliotheca Colbertina), probably of the earlier fifteenth century.

At *St. Germain* ; so Montfaucon, p. 1127 *d*.

At *Bâle* ; so Fabricius, and Montfaucon, p. 613 *b*.

A translation into Italian by Paulus Antonius de Lignano, mentioned by Argelati (ii, Part I, p. 168), doubtless remained in MS., and seems to have disappeared.

About the year 1477, the above-named Paulus Antonius de Lignano, great-grandson of the author,* prepared for the press this work of his ancestor. In so doing he took great liberties with the text, suppressing most of the prefatory matter, which may, not unnaturally, have struck him as somewhat fanciful, omitting also some sections and paragraphs of the main treatise, while interpolating throughout explanatory remarks of his own, which might well have been dispensed with. Of the text, as thus manipulated, editions, copies of all of which are extremely rare, were printed as follows :

At *Bologna*, per Henricum de Colonia, ad instantiam Sigismundi de libris, MCCCCLXXVII, 6 Kal. Ian. It occupies, in double columns, 75 pages of a folio volume which has no general title, containing eighteen legal treatises, all dated between the years 1477 and 1493, the first of which is headed : "Clarissimi iurisconsulti D. Lanfranchi de Orianò solennis utilis quotidianus et practicabilis tractatus de Arbitris. Additis multis aliis questionibus clarissimorum doctorum." Legnano's work is reproduced at the end of the present volume from the

* See the pedigree of the family, *supra*, p. xviii. It would seem that a MS. of his additions exists in the Bibliothèque Nationale.

All Souls copy of this very rare collection, as is explained *infra*, pp. xxxvii and 375.

At *Pavia*, per Franciscum de Ghirardengis, MCCCCLXXXIV, die xxviii maii, fol.

Again at *Pavia*, per Christophorum de Canibus, MCCCCLXXXVII, die ult. maii, fol. There is a copy at Turin, commencing: "Tractatus elegans *De Bello, De Represaliis et De Duello*: clarissimi interpretis domini Iohannis de Lignano Bononiensis, in celeberrimo Bononiensi Gymnasio actu legentis, cum additionibus domini Pauli de Lignano, eius pronepotis."

At *Milan*, per Ioh. Angelum Sinzenzeler, impensis Iohannis Iacobi et fratrum de Lignano, cum additionibus domini Pauli de Lignano (s. d. circa 1500).

Again at *Milan*, apud fratres de Lignano, MDXV, cum tractatu Paridis de Puteo de eadem materia.

Also at *Turin*, MDXXV, 4to.

The *De Bello*, with the *De Represaliis*, but without the dedicatory Preface, and without any of the matter added by Paul Antony Legnano, is printed (as "nunc primum in lucem editus"!) in vol. xvi, from fol. 371, of the *Tractatus Tractatum* of 1584, which had also printed the *De Duello*, with the additions, separately in vol. xii, from fol. 281. This last-mentioned tract had already appeared in vol. xii, from fol. 281, of the edition of 1549 of the *Tractatus*. On the earlier separate editions of the two last-named treatises, see *supra*, p. xxiv.

The Contents of the work.

The *Proœmium* contains a good deal of curious matter, most of which is omitted even in those printed editions which contain some of it. It begins with an elaborate and over-fanciful dedication to Cardinal Albornoz, whose exchange of his peaceful duties at the Papal Court for the command of armies is likened to the action of Ahab, King of Israel, who "changed his raiment and went into the war." Bologna, the seat of knowledge of all kinds, especially of law, and capital of the states of the Holy Church, is likened to Jerusalem, the throne of the Lord. Like Jerusalem, Bologna had been severely punished for her sins, but looks for deliverance to the

Cardinal, to whom the treatise, concerning Bologna and the War in which he is engaged, is offered by the writer.

Legnano then sketches the history of Bologna between the years 1350 and 1360, under six heads,* of which the first relates to the cession of the city by Giovanni Pepoli to Giovanni Visconti, Archbishop and Lord of Milan. The second deals with the rule of the viper brood,† of the Archbishop, i. e. of his three nephews, Matteo, Galeazzo, and Barnabo, and of their representative, Giovanni Visconti de Oleggio. The third deals with Oleggio's assertion of his independence. The fourth describes the misfortunes which hence resulted, and the fifth the recovery of Bologna by Albornoz to the see of Rome. The sixth, if such there be, seems to consist of visionary peeps into the future of the city. Throughout this sketch the Archbishop is described as "Filius Saturni," his nephews as "the three vipers," the Pope as "Iupiter," Albornoz as "Frater Iovis." Oleggio as "Mercurius," Bologna as "Taurus," an army as "Mars." Full information is given as to the position of the heavenly bodies at the date of each event,‡ and, as has been already explained,§ the author indicates, with reference to each of the three periods into which he divides his subject, the book by which he proposes to illustrate it. Of these, only the *De Bello* had, as yet, been written.

After this long exordium we come to the treatise *De Bello* itself (pp. 1 and 67, *infra*). It consists of three "Principal Treatises," the first and second of which are quite short, dealing respectively with the definition of "War," and with the classification of its species. The third "Principal Treatise" occupies the rest of the work, dealing at length, in its six sections, with the several species of war, viz. :

I. *Heavenly Spiritual War*, arising from the rebellion of Satan (chaps. iii-vi).

II. *Human Spiritual War*, i. e. the conflict between morality and self-interest (chaps. vii-viii).

III. *Universal Corporeal War*, i. e. war in the usual sense of the term, considered under six heads (chaps. ix-lxxvii), treating respectively of : (1) the justifiability of war (chaps. x, xi) ; (2) those by,

* The Bolognese MS. says six, the Vatican MS. five.

† The viper occurs in the Visconti arms.

‡ Dr. Rambaut, the Radcliffe Observer at Oxford, has been good enough to look at the positions so attributed to the sun, moon and planets in the zodiacal signs, and pronounces them to be practically correct.

§ *Supra*, p. xiii.

and against, whom war may be waged (chaps. xii-xvi); (3) the elements of warfare (chaps. xvii-xxx), with excursions upon the cohort, legion, &c., upon the mutual duties of troops and commanders, and, at tedious length, upon courage and the list of virtues generally; (4) the rights and duties of troops who are obliged to serve, or who do so voluntarily, from various motives, and in particular as to the service of stipendiaries, whose position is discussed at inordinate length (chaps. xxxi-lviii); (5) plunder, prisoners, stratagems, and other incidents of warfare (chaps. lix-lxxv); (6) the seven kinds of wars (chaps. lxxvi-lxxvii), without mention that these kinds had been already so distinguished in the previous century by St. Thomas Aquinas in the *Sec. Secundæ*, Quæstio 40, and by Henry of Segusia (Hostiensis) in lib. i. rubr. 3 of his *Aurea summa*.

IV. *Corporeal Private War*, in self-defence (chaps. lxxvii-cxxi).

V. *Corporeal Private War*, in defence of the State (the "mystical body"), i. e. *Reprisals* (chaps. cxxii-clxvii).

VI. *Corporeal Private War*, for clearing one's character, i. e. the *Duel* (chaps. clxviii-clxxiv).

Estimate of the work.

It must be abundantly clear, from the preceding analysis of the work, that what would now be considered to be questions of International Law occupy but a small place in it. Putting aside Tracts I and II, upon "Spiritual War, Celestial and Human," as also Tracts IV, V, and VI, devoted to the several species of "Private Corporeal War," viz. "Self-defence," "Reprisals," and the "Duel," we may concentrate our attention upon Tract III, the longest of all, which deals with War properly so called, described by Legnano as "Universal Corporeal War."

Even here, the author is primarily a canonist, astrologer, theologian, and moralist; constantly preoccupied with the claims of the Papacy and the exceptional position of the clergy. In support of his arguments he quotes occasionally from Greek and Roman writers, but his pages are throughout crowded, one may perhaps also venture to say disfigured, by a superfluity of references to the civil and canon laws, while his style, here as elsewhere, is not unfrequently open to the criticism of Rabelais upon that of the Glossators, as "latin de

cuisinier et marmiteux, non de jurisconsulte." At the same time, the work throws much light upon fourteenth-century views and practices, as, for instance, the employment of German mercenaries, the treatment of Jews and Saracens, the rivalry between Popes and Emperors, the recognition of clergy and laity as forming "two peoples"; and, intermingled with all this, we do find much that is recognizable as appertaining, in a rudimentary way, to an International Law of War. We are thus justified in looking upon Legnano's book as being the first in which an attempt is made to deal with that subject as a whole. He discusses the lawful causes of War, the authority by which it may be declared, the distinction between war and reprisals, the distribution of booty, the employment of stratagems, the treatment of prisoners, of non-combatants, of enemy troops who have surrendered and, in particular, of enemy commanders. It will be noticed that he has here nothing to say as to hostilities carried on at sea, a topic which he, however, appears to have handled subsequently.*

His quotations from Roman classics are scanty, but he shows a wide acquaintance with the, already translated, writings of Aristotle, to whom he always refers merely as "the Philosopher." His citations of the Fathers are for the most part derived from the *Corpus Iuris Canonici*, which indeed, with the jurists who comment upon it, is his chief source of inspiration.† He is, of course, also familiar with the *Corpus Iuris Civilis*, with the *Feudal Constitutions*, and with the *Lex Lombarda*.

It is a pleasure, as well as a duty, to express my gratitude for assistance received, in the performance of what has been a by no means easy task, from my friends Professors Brini, Da Costa and Sorbelli of Bologna, especially from the last named, in his capacity of head of the library of the University and City. I am also

* In the *De multiplici genere monarchiæ*, see Rossi, *Dagli Scritti inediti*, p. 59.

† He relies constantly, as might be expected, upon Causa XXIII, *De re militari et de bello*, and Causa XXXIII, Quæstio iii, *De pœnitentia*, of the second Part of the *Decretum*; upon the Title, *De Treuga et Pace*, in the Decretals, lib. V, tit. 34; and upon the titles inscribed *De Homicidio*, in the Decretals, lib. V, tit. 12, in the *Sext*, lib. V, tit. 4, and in the Clementines, lib. V, tit. 4: also upon a long list of canonists, and upon the *Secunda Secundæ*, Quæstio 40, of St. Thomas Aquinas. See the Index of Authorities, *infra*, p. 457.

indebted to the authorities of many other public libraries, for information courteously supplied in response to my enquiries ; and to Dr. Rambaut, for kindly ascertaining the general correctness of the astronomical statements occurring on pp. 73-78 of the extended text. I have been fortunate, for a second time, in securing the valuable services, as translator, of my friend Mr. Brierly, and, not least, in having been permitted by the Carnegie Institution to entrust the production of a work abounding in technicalities to the artistic accuracy of the Oxford University Press.

T. E. HOLLAND.

May 11, 1917.

TRACTATVS DE BELLO

d. Io. de Lignano de Mediolano Iuris Vtriusque Doct.

Collotyped by the Oxford University Press from a photograph of
the thirteenth-century manuscript, B. 1393, preserved in the
Biblioteca comunale dell' Archiginnasio di Bologna

(See the Editor's Prefatory Note which follows)



PREFATORY NOTE

THE original intention of the Carnegie Institution was to adopt for its edition of the *De Bello* the text of the Treatise as first published. Having ascertained that the first edition of the work appeared at Bologna in 1477, the editor procured its reproduction from a very rare volume, lent for the purpose by All Souls College to the Oxford University Press.

His further enquiries, however, addressed to many European libraries, resulted in the receipt of information, courteously supplied by Professor Brini of Bologna, in March, 1912, as to a manuscript of the Treatise, believed, on good evidence, to have been written in the lifetime of the author. It was thereupon decided to make this manuscript the foundation of the present edition, and to relegate the very imperfect and much altered version of it, printed in 1477, to the end of the volume, to which it may be regarded as a sort of Appendix, commencing at p. 375 *infra*.

In a letter to the editor of February 13, 1913, Professor A. Sorbelli, the accomplished librarian of the Biblioteca Comunale dell' Archiginnasio di Bologna, wrote as follows :

‘ Il nostro interessantissimo manoscritto è indubbiamente il più antico e il più autorevole dell’ opera del Legnano. Da un esame accurato che ho fatto, e dal giudizio di parecchi competenti, si può fissar la data del manoscritto nostro (B. 1393) al finire del secolo XIV, e cioè intorno al 1390. A circa questo anno corrispondono la “littera”, o scrittura, che è Bolognese, e perciò assai nota qui ; la filigrana della

carta che, come può, confrontando il Briquet, stabilirsi, è appunto a un di presso di quell' anno o di due a tre anni addietro; ed il confronto con altri manoscritti datati.'

He goes on to confirm the early date assigned to the manuscript by an inscription placed upon it by a notary of Bologna, Rolandus de Castellanis, who was living in 1420, to the effect that he had bought it from Io. Bitini de Brissia, executor of Luca Cantarelli.

The pages which follow were collotyped by the Oxford University Press from a photograph of the manuscript taken at Bologna in 1912.

For the text, as 'extended' and otherwise revised by the editor, with his explanatory note prefixed, see *infra*, pp. 67-205. For Mr. Brierly's English Translation of the same, see *infra*, pp. 207-374.

T. E. H.

Rex isrl. mutauit habitum et ingressus est bellum. in regni. xxxij. c. isrl. est solus dñi. et ut scribit peremio. in. c. vocabunt isrl. solus dñi. Et haec est p̄monitio s̄c. romane ecclie. / cui caput est isrl. i. alma ciuitas bononie que uere uocari potest isrl. nam in ipa quoruamq. scibili et maxime iuris diluadati est ueritas. de hac scribit zacharia. viij. c. dabit isrl. ciuitas ueritatis. hec formosa sicut isrl. cant. di. c. de hac etiā clamat p̄pha. poph. i. cā. scriptor. isrl. in hac. et actus. di. c. Repleta isrl. dextera ura. de hac etiā scribit. apoc. xxi. c. vidi ciuitate sc̄m isrl. et ibidem. xxi. c. cōdit m̄ch. ciuitate sc̄m isrl. descendente de celo. i. bononia. Et uē de celo descendit. Cum ibi fons uitae uiuū que adeo p̄ ora p̄cipi p̄pugnant. di. di. quo uē. c. de bon. tempo. p̄. l. ult. de hac scribit apostolus ad ebreos. xij. c. Ciuitate di uiuē isrl. celestem et idē ap̄s. ad gall. iij. c. que aut p̄sum est isrl. libera est. de hac etiā scribit. i. p̄. p̄. c. elēgi ierusalem ut ibi foret nōmē meū. Hec etiā p̄mitentē altissimo. et sup̄ius disponēdis corpibus. hec ciuitas bon. ut isrl. ad exsecutiū mutata est et dñastata. et p̄ inhabitantū delicta. innumera odia. mutua diu ominatus est altissimus ip̄us destructōem. ut scribit. iudic. xxiij. c. delecto isrl. sicut de feci solent tabulle de insidijs inimicū. scribit. p̄. p̄. c. de p̄. deit insidijs in isrl. et p̄ sup̄bia inhabitantū gminatus est dñs p̄ p̄pham dicens. Computasere p̄cia sup̄biam iuda. et sup̄bia isrl. multa. Jerem. xij. c. et p̄phā clamat p̄pha p̄ra inhabitantes. dicens. dabo isrl. in acruos arene. et alibi p̄ hac clamat p̄pha dicens. pona isrl. q̄ acruū lapidum. michee. i. c. et p̄ hac clamat p̄pha q̄ nutritos in ea. dicens. Contra facies isrl. nutritam. in am. barub. iij. c. et p̄ hac. i. inhabitantū excessus. fōm est ut et acru regis babilonie obsideret isrl. peremio. xxiij. c. et p̄ hac fōm est quod scribit. ezech. v. c. hec est isrl. in medio gentiū. i. hostili p̄ne ē. fōm est etiā quod scribit. ier. t̄. i. c. fōm est isrl. sicut palliat. Alma ḡ ciuitas bononie uē isrl. in ciuitate. et caput sol. i. p̄monitio s̄c. romane ecclie. Rex aut acru regens. et gubernans est. R. in p̄p̄o pater. et dñs. dñs. Egidius. in p̄p̄o diuina. dabin. eps. hic em. mutauit habitum et ingressus est bellum. nam de trono pacifico. i. sacratissimo. collegio cardinaliū et de latere dextro. i. in p̄. Innotat. p̄p̄o. dñstatis at est ad recuperatōem isrl. i. p̄monitio penitus exp̄dit. et in ip̄is recuperatōe mutauit habitum. nam relictā pontificali quiete. ingressus est bellum. et bellum. forte. ut p̄nceps p̄missimus. nā ante ip̄m nō erat rex in isrl. ut scribit. iudic. xxiij. c. in diebus illis nō erat rex et p̄ca. dicit dñs ad eu. f. dñm. E. nisi te regē sup̄ isrl. dñi. iudic. ix. c. Et p̄ dicere pot. elegit me dñs. ut eē rex. p̄. p̄. c. et ip̄m q̄stauit dñs. regem sup̄ bñm isrl. i. p̄. p̄. c. et ite rex p̄rexit de solio dñi. i. p̄. c. et bñ ingressus est bellum et feliat. nam ut altatus alla duplici. f. fūmē p̄uidenat. et fortitudinis incluet. oīa iura sacrosactōe romane ecclie. t̄rante us p̄p̄o. de nichilo. produxit ad dñ. de t̄nebris ad lucem. ut dñs possit q̄ de nichilo aliquid p̄cre. Gen. i. c. et b. dñs. i. p̄. c. de rei. i. p̄. c. act. Hec ḡ. ut rex isrl. mutauit habitum et ingressus est bellum. et haec. Quia ḡ rex isrl. i. p̄monitio et maxie ciuitas bononie que est uē caput p̄monitio. et que sic. ut dñs dñm est de extremo ad extremū deducta. mutauit habitum et ingressus est bellum. et haec dieb. p̄. i. p̄. et pendet satis uideret ingressū hac sub salenac. p̄ penitus p̄rassire. Idcirco Ego. Jo. de signano. Johannes. de mediolano minimus m̄. acruos. uis utriusq. datur. ad hos. Pouen. dissimili in p̄p̄o p̄m et dñm meū dñm Egidii in p̄p̄o diuina. ep̄m dabin. in partibus rethie. p̄ s̄c. romana. ecclia dicitur ḡnalem et dñm regē isrl. t̄rasmittendū q̄repi tractatum facere. de isrl. i. de ciuitate bon. et de bello. quod h̄m mutato ep̄s ingressus

Isrl.

Isrlm.

Bononia.

Isrl. descendit a iudic. i. p̄. i. p̄.

Isrl. Egidii.

Isrl. p̄. i. p̄.

Jo. de signano.

Isrl. Egidii.

hoc ordine. Nam de Civitate Londonie ponam sex casus imphantes, que acut qm
 gerunt dñm civitatem, Anno dñi. m. ccc. usq; ad. m. ccc. maxime p que infexit
 dñm mutatio, et ai quoto tpe et aspectibus annoz an meridico dictu quib; rec
 gtingerut. no aut horaz. Et hoc appono q in aliquib; tractatib; intendo iuris metus
 excedere, explicando aliqua que forte cñcient, et quo cuilibet casu submitta unum
 tractatu ul plures, ut occurrer, aliquos tractatus, transito sub silencio, aliquos expli
 cabo, unu solum ex nūc publicabo, videlz tractatu de bello, promittens dño amnuente, sin
 gillos, tradere copiatos, tpe qgruo, et ca cessante mhibitis. supplicans eadē p.
 p. ut inbecillitatem intellectus subportare dignemini, et hoc ut modici susape, ex
 dñm corrigendum si placuit et reformandum. iux genaliū sapientie auctoritatem.
 Exiguū munus et c.

I. clemens p. p. regnante.

Sedente Ioue clavigero, clemencia sexto ferente sup charredam pishatois
 ex eius edo q ppropere, mare accessit ut libere ingrederet uride et flori
 dum thauri pabulum. ha fuit annus dñi. m. ccc. die. viij. iulij. tūc sol in
 cancro. g. xxij. a. xxxij. luna cu leone. g. xxvij. q. xxj. draco capite geminabat
 g. xxvj. a. viij. saturnus in ariete. g. xxvj. q. xxxij. Iupiter cu cancro. g. xxvij.
 a. li. mars in libra. g. xi. q. xviij. venus retrogradabat in cancro. g. xxvij. q.
 xx. mercurius uenerem sequebat in cancro. g. viij. q. x. *Et tunc alastimus*
 filius saturni arcuū gestans, a ioue interius nupans ex hmbis lateralib; tēib; albis
 bipere exgentib; a septemprione descendens, intercedente mercurio, ioue cum
 Marte puenit in pabulo, et in pastore ppenū gregis, thaurū exstat assumptus, et
 ha fuit annus dñi. m. ccc. die. xxij. acribus, sole luna in cancro. g. viij.
 a. l. saturno in ariete. g. xxij. a. xviij. Ioue in leone. g. xxvij. a. xij. Marte
 in sagittario. g. xxij. a. xxxij. venere in virgine. g. xxvj. a. xx. mercurio in libra
 g. xxi. a. xvj. Capite draconis ingemine. g. xx. a. xviij. cauda, et c. *Post*
 tpeis lapsum opante ioue clemencia, nec no et arcuūllo que saturni filius, ab eo
 suscepit fām est q saturni filius Ioue in pabulo u'balis suscepit et ipm imū gregis
 pastorem recognouit. ha fuit annus dñi. m. ccc. die. viij. septembris. sole i virgie
 g. xxij. a. x. luna in virgine. g. ij. q. xxx. Capite in thauris. g. xxij. a. xviij. Ioue
 in virgine. g. xxvij. a. xviij. Marte in sagittario. g. v. a. xx. venere in virgine. g.
 ij. a. viij. mercurio in libra. g. xxvj. a.

I. dignitas fidei.

Saturno in cancro. g. xxij. a. xxvj.

Ecce pcurus hac tpe modico tenu
 quare. m. nec exabunt buente quige, nūc hūc, nūc illum meretriciā more appetendo,
 preumpere, ut dia possit de te quod scribit ysai. m. c. quō fū est meretrix ciuitas fi
 delis, plena iudici. iusticia hūabat in ea nūc aut hominide, argenti uersum ē in sco
 riam. vñū tuū mīspū est aqua, pīnceps tuī in fideles, pōa tū pūctū omīs dīlligūt
 quicquid pūctū tū tributoēs p pūpillo nō iudicant. Causa bidue nō ingredit ad eos,
 p ha aut dñs pōatū fornō, ysa. heu ego qsolabor sup hostibus, et vīdicabor de in
 nimis meis, et queram manū meā ad te, et ex quoquā ad pūra scōria tūa, et auf
 feriam omē sangnū nūi et restatū iudices, tuos sicut fuerūt pūb, et q salarios
 tuos sicut fuerūt antiquitus, post hec uocaberis ciuitas iusticie. sic qtingit et qdget
 de te thaurē, cum triparentis, pēt semmaruallus, surget quos. pūet motus, senectus,
 est obfano, s; maoz mīctus, hoc opatur. hūc cūc pūctio tūc tractatus, vñū de
 mare. i. de bello, i. pūm publico, allum de ioue. i. de ecclia. et ipm gubnatō p pastores,
 suos, et p aspectus nāratos, quō extus, ipm p pperitatis, et adūptatis maxime respu
 respectu hūius, tpeis patrimonij. Allū de saturno. i. de impio, et ipm gubnatō p pro
 ceres, hōdierinos, et quō extus p pperit et adūsi, maxime respectu regimnis eccliasia
 et tpeis ytalica, l; aliquatē transcendant metas iuris, hos tñ nūc nō publico, ut
 pcedi donet cesset cā urgens. *Secunda causa.*

et tractat.

1. notatio archiep.
2. obusto.

3. principis.

4. aglāmpiales.

Post hoc Saturni filio: eliciatis tibus supranotatis uiperis. Saturnus aquilini
in cordis cenao, gestantib; et obusta trona adstendentib; ipsi induit in pabull
pastores, suscipiuntur et ha sunt annis dñi. mactat. die. xi. atubris. tunc li
brabat sol. g. xxi. q. xxi. Luna ingrebat ai leono. g. xxi. q. xxi. Draco ca
pid tegebat in arieto. g. ii. q. lviij. Saturnus geminabat. g. xxi. q. xxi. Jupiter
librabat. g. xxi. q. xxi. Mars in capreorno. g. xxi. q. iii. Venus luxuriabat in scor
pione. g. xxi. q. xxi. Mercurius in scorpione. g. xi. q. xxi. Draco capid tegebat
in thauo. g. ii. q. lviij. = Post parā ipis forte posita sup hēdente qbusi maior
ex hēpēis in pabullum solus ell euatur. hic nō dō quōtam quia nō pondero ad sequēcia
= Post hēc mercurius a viperis penitus extirpauit p̄menscens, intra pabullum ut
pastor assumit. Ecce hēc ipse brauissimō, hēc thauus luxuria furens, aliud tenui. m̄.
grahere nō erubuit et q sic luxuria furens, in totipia ohrabendo quberno, nām pur
gabillis excessisti luxurie, p̄stet dñs sup te, sulfur et igne adnō de celo, et suberit
te et omem q te regione et simitores et omia uirencia terre ut scib; Gen. xxiij.
cum linea recta semiorallabit quid tibi curuū est rectificabit. hēc aut sunt annis dñi
mactat. die. xxi. aprehis. sole in thauo. g. v. q. vii. Luna in gemini. g. xxi. q. xxi.
Capite in pisab. g. xxi. q. xxi. Saturno in gemini. g. xx. q. xxi. Ioue in sagittis
g. xxi. q. xxi. Marte in gemini. g. v. q. xxi. Venere in thauo. g. xxi. q. xxi. Mer
curio in arieto. g. xi. q. xxi. = Hinc se cūc subico tractatus de ipali dño uniuersali
infra impium tractando, ipius origine, ipius spēs, diuisione, successionē, modū gubernatōis
et opuatōis. explicando inūquodque regimē a minimo usq; ad sumū in toto uniuerso, ultra
uero metas explicando, qualis p̄m varietate climatu mundi uariant mundi regimina,
et qualis in eisdem climatibus, variatio supior motib; et aspectibus uariant mundi regimina
nam aliqñ tyrantes, alij p̄stis alij p̄napius, nālis cōi et uulgato p̄mone, ut latissime
psequar in psequē hui tractatus.

Tractat.

Tercia Causa.

Post hoc euant uipera maior et mercurius recognouit sequentem in pabullo. ha
sunt annis dñi mactat. die. xxi. septembis. sol ai capra salbat. g. xxi. q.
xli. Luna mordēbat a scorpione. g. xxi. q. xxi. Draco pisabat am capite
g. x. q. xli. Saturnus am cancro. g. ii. q. xli. Jupiter ai capra pascebat. g. vii.
q. xxi. Mars morsum patiebatur scorpione. g. xxi. q. xli. Venus am capra. g. i.
q. vii. Mercurius uenerem p̄cedebat sup capra. g. xxi. q. lvi. Ecce inuereunde ca
pura noui aliud. m̄. sic instantane, nō erubuit qrahere. q parā post hēc hinc
dato. libello repidy. o. reuoluit ad. a. et redit am mē curio. Et hēc sunt anno dñi
mactat. die. x. februarij. et tūc sol. pisabat. g. o. vii. q. lvi. Luna geminabat. g. xxi.
q. lvi. Capid dracomis erat repletum pisab. g. vii. q. vii. Saturnus ai cancro re
tuebat. g. o. q. xli. Jupiter saltabat ai capra. g. xli. q. Mars sagitta fe
rebat. g. xxi. q. lvi. Venus aqua spargebat. g. xxi. q. lvi. Mercurius pisabat
g. o. q. xxi. Insonesam insim est thauo, binos simul pati q p tot qubina diua
gna uiges, balus fuisse thauo, binos simul pati q p tot qubina diuagari. Et
quia sic diuagata es, tibi qinget quod scripsi est. adducet dñs sup te gentē de longinq;
et de exstemis p̄mib; terre, in similitudine aquille uolantis, cum impetu, cuius lingua
intelligere nō possis. gentem p̄nassimā que nō differat senī nec m̄p̄eat paruulo, et de
uoret fructus iumentorū m̄p̄ ac fruges, terre tue donec intereat, et nō relinquat tibi
tutici et binū et oleū armenta boiū et greges om̄i. hēc alocutus est dñs ad p̄lm̄ p̄e
uariantem ut scribit de dierono, xxviii. c. Cum quā hanc uoluerit, in thauo, tunc o
tibi fiet mobilis p̄lm̄. = Hinc cūc subingo tractatus de qceptione et recognitōe dñi
ipius explicando, uarios mōs, penes uarietate dñorū et qcedentū, et reapientū.

Tractatus.

Quarta Causa.

Post hoc qstante. m̄. mercurius ai thauo, flores et diuidias pabulli thauem sic
runt regnante ioue clangero, moerena dñi ferente corallē exstibat, et ha sunt
annis dñi mactat. die. xxi. ap̄lis. tūc sol erat am furebundo thauo. g. o. q.
xli. Luna fudebat aquas. g. v. q. xxi. Draco capid sub unda tegebat. g. ii.

1. lani sunt mē dñorū et
suspensio studij t̄m̄tate lvi.

q. xxxv. altitudo quatuor. s. xlv. q. xlv. Juppiter natabat in aqua s. xlv. q. xxxv. mare
 gemmabat s. xlv. q. xlv. Venus habebat omni p[er]fecti s. xlv. q. xlv. Mercurius cu[m] timore s. xlv.
 q. xxxv. O thauri incedite hec pena sunt antiqui et temerarii in duorum aonige qui
 teat[ur] q[ua]nte m[un]di auxit dices suas. te actus cor[um] sup[er] quadrum elluando, et de sep
 temidone uersus meridiem latissimo solo p[re]senti, si p[re]sente m[er]itacis p[er] duorum r[ati]o[n]is
 cornibus, cornu[m] et q[ua] sic ellatus inquit d[omi]n[u]s ad te thauru[m] eo q[uo]d ellatu[m] est cor tuu[m] q[uo]d
 cor di idarchio adducam sup[er] te alienos robustissimos genciu[m] et interficiant et trahent te, et mo
 sup[er] pulcritudine sapie[n]t[ie] et poluent decorem tuu[m] et interficiant et trahent te, et mo
 rieris in interitu[m] aspor in corde maris, nuquid d[omi]n[u]s loqueris, deus ego sum cora[m] inter
 facientibus te, cum p[er] homo no[n] deus in manu ardentiu[m] te in manu alienor[um] morieris
 quia ego lauius sum inquit d[omi]n[u]s. ut hec scribitur ezechiel xxxv. c. Cum Job cornib[us] thauri
 medebit quod in centro est ad p[er]fectu[m] g[ra]m[ma] reducit. Hinc t[ame]n adu[er]go tractatu[m] de etha
 lica censura archa singillatim p[er] ip[s]os tractatus, exp[re]ssando singillatim. Q[ui]nta ca.

tractat[ur] de ecc[lesi]a. c[on]fusa.
 2. i. f. 101.

magis p[ro]p[ri]e ut m[un]di
 app[er]e[n]t[ur] tractat[ur]

Post hec iteru[m] dep[re]scent[ur] mercurio, intra pabulum thauri p[er]fectu[m] in p[er]fectu[m]
 saturni p[er] adoptio[n]em ad sup[er]ius, martem motu ueloc[itate] ut thauri pabulum ingredit[ur]
 p[er]fectu[m] destinatur. qui p[er]fectus, gradus h[ab]et et duenos ip[s]ius est ingressus. finali
 opim dante mercurio, altissimus iouis frater ab eo p[er]fectu[m] a saturno in p[er]fectu[m] a
 martem bellica supra ceteros ecc[lesi]e cardines gestans martem directu[m] pueniendo intra
 pabulum est susceptus ut Ciraullo p[ri]me t[em]p[or]e reuoluto, sicut t[em]p[or]e motu uelocem t[em]p[or]e gra
 diens puenit in t[em]p[or]e sic n[un]c h[ic] uersa uolantem rep[re]s[en]t[ur] p[er]fectu[m]. s[ed] t[em]p[or]e pueniens unu[m]
 acupant. Ciraullo p[ri]me t[em]p[or]e reuoluto, tandem in eadem claudib[us] op[er]atur claudib[us] claudunt
 antequam no[n] negligat claudib[us] quod posterius alio t[em]p[or]e uolante tendit ad aspa regit
 rugientem ut emittat rugitum. saturnus retrogradus, n[un]tatur, erigit. Volatus no[n] attingit
 aspa, s[ed] t[em]p[or]e araullo p[ri]me t[em]p[or]e reuoluto, rugitum no[n] longe p[er]fectu[m] nec saturnus erigit. ad simu[m]. tibi
 thauri in p[er]fectu[m] fiet quies. Q[ui]ntus in zodiaco differtur motus ut quiescat donec
 radijs ingratu[m] nec circūflectat, sicut. Ad auge iam motus p[er]fectu[m] p[er]fectu[m] p[er]fectu[m]
 culli eff[er]at. eff[er]at p[er]fectu[m] eff[er]at, unu[m]. p[ri]mo araullo p[ri]me t[em]p[or]e reuoluto, post araullo p[ri]me
 ruitur post no[n] p[er]fectu[m]. Volatib[us] multiplex reducit et unu[m] b[ea]t[us] uolante ad aspa
 plimis g[ra]ngent et p[ri]ma. Vidi t[em]p[or]e t[em]p[or]e ubi no[n] p[ri]ma g[ra]ngent post m[un]di fiat
 vna. post in di alteru[m] angellum uolantem in manib[us] tenente euagat. Et in ar
 cullari ep[ist]ola. De oppo[si]to deductus ad auge retrogradando, de auge deductus ad aspa
 Q[ui]od ym[u] t[em]p[or]e dixit in simu[m] quod simu[m] araullo p[ri]me t[em]p[or]e reuoluto, in ym[u] surgit lex grande
 et mixtus sonitu[m] sandans pacifer uenia trahit. Conuocet possa reducit simu[m] ad
 p[ri]ma. sparsa redigent in chaos ut ex ip[s]o aspa deuiauit in t[em]p[or]e. non ligat
 thauri, am p[ri]ma, quies. p[er]fectu[m] eueneus. Currit t[em]p[or]e p[ri]ma, bobus, p[ri]ma
 o[mn]i substat. Catuli p[er]fectu[m] b[ea]t[us] p[ri]ma ut alteri sequens euagat, b[ea]t[us] p[ri]ma p[ri]ma. astute
 in m[un]do minuto in p[er]fectu[m] n[un]c coru[m] sandant m[un]do, et p[ri]ma op[er]ant b[ea]t[us]. Q[ui]n fuit
 t[em]p[or]e post b[ea]t[us] p[ri]ma, et b[ea]t[us]. Erigitur, m[un]do, t[em]p[or]e alter et ecc[lesi]a nullus.
 Vido duos p[ri]mos ecc[lesi]e p[er]fectu[m], ad grande colloqui accessuros, fiet colloqui in loco
 humido et benenoso. Ibi tractabit ut m[un]do, inferior g[ra]ngent. Ibi tractabit ut m[un]do
 p[er]fectu[m]. Ibi tractabit ut m[un]do, p[ri]ma p[ri]ma p[ri]ma. p[ri]ma p[ri]ma. Ibi tractabit ut ecc[lesi]a
 p[ri]ma p[ri]ma. Ibi tractabit ut p[ri]ma et p[ri]ma, elluente. Ibi tractabit, ut regio ma
 ritima g[ra]ngent. Ibi tractabit ut m[un]di p[ri]ma, in p[ri]ma p[ri]ma, fiet magna g[ra]ngent
 Tres aut inferiores p[ri]ma in alio angulo interiori eiusdem domus eodem
 t[em]p[or]e colloquunt ad m[un]do et multa de m[un]di disposita disputabunt et diffiment. et
 hec colloquia fient annis d[omi]ni. m[un]di. de m[un]do. ac cornib[us] p[ri]ma, cum m[un]di fulgor in scabulo tuo, subumbrabitur, nec
 negligas. Et fiet, lxi. die. b. m[un]di. hec in grandi colloquio, et multi formi tractat[ur]
 plancto, de quib[us] in t[em]p[or]e d[omi]ni. hec nam op[er]ant reuolutio[n]em aspectus, et p[ri]ma
 est aliud in m[un]di. thauri nam annis d[omi]ni. reuolutio[n]em quib[us] m[un]do et die, ducent[ur] repulso
 o. eiusdem reme[n]t[ur] recepto. s. O thauri motu p[ri]ma multiformi, cu[m] motu p[ri]ma

no[n] uide d[omi]ni
 ecc[lesi]a ad p[ri]ma colloqui
 accessuros

hec g[ra]ngent

i. p[ri]ma, legat

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nata, obedire superioribus. Hinc est quod inquit idem philosophus per merita, et per cetera. necesse est hinc mundum esse originem superioribus, facit ut omnis virtus inde regatur, et in aliquo non obediat per dispositionem materiam, et inde sunt aliqua per meritum agentium superiorum, ut in ista sit sensitiuus appetitus, ut inferior, aptus, est obedire, hinc est quod dicit idem philosophus de anima tractatu de motu animae et de mouente, si intellectus moueat appetitum sensitiuum et ipse eadem obediat motus est naturalis ac si species superior moueret inferiori. si autem contra motus non naturalis, ac si species inferior moueret superiore. Exemplum patet in monachis christi auctor, nam aliqui sunt subditi repugnantes principibus suis, exempla huius repugnantis tollit in quatenus, nam in quatenus appetitus sensitiuus inclinatur in excessum ut pote in ordinatum abum potius ut aliquid simile. Vnde dicit illud fugiendum ut nocuum, et in in quatenus unat intellectus, et eo et proprie quatenus non est inuis moralis, firmata, nam ut inquit idem philosophus. In virtuosus omnia consonat. Vnde cum ex multis et frequentibus actibus in appetitu sensitiuo, firmata sit promptitudo quedam inclinatio ipsius appetitus sensitiui ad bonum et conformitatem, tunc proprie est uirtus. In incontinentia patens est hoc repugnancia, si ibi unat hoc appetitus sensitiuus nec illa de meum firmatum dicitur ex frequentibus actibus ut assuevit inclinare in malum quod sine aliqua repugnancia tunc semper inclinet. Hoc repugnancia proprie censetur, bellum spirituale humanum loquendo moraliter. De hac repugnancia etiam loquitur apostolus ad romanos, in c. videtur aliam legem repugnantiem legi mentis mee, transumptus, xxxij. q. b. si paulus. De hac omnia repugnancia scribitur. d. di si perferendum de q. nam concupiscentia, et de hac spirituali bello. loquitur. g. g. xxij. di nisi bella. In hac autem repugnancia, ab adulescentia regularis est inclinatio in malum. nam omnis etnis ab adulescentia prona est in malum. Gen. viij. c. xij. q. i. omnis etnis, et eo quod sicut multiplex assignari, prima quia malum per quod per se bonum aut non sine gratia. Alia o per fomitem originalem peccati impellentem ad malum. Alia, quod facilius ad malum quam bonum. nam facilius consistit in medio centraliter. Graua autem in extremis. ad medium autem transiunt, vnde in a rege, ad extremum autem multiplicat. Alia quia plura sunt impedimenta boni quam mali. Alia quod non fit bonum nisi cum dicitur, et quia adulescentia parum uigilet, per abstractionem organorum corporalem, et hanc credo uerione vocem. Ha de bello spirituali, quod circa plura, possent tractari. si permitto quod transienderet metas, uis, In quibus minus, quam possibile sit intendere, descendere. De hac tractaturus, de bello, vniuersali corporali ipius tractatum explicabo per quod.

repugnancia

in eis etiam ab adulescentia prona est in malum.

De vniuersali corporali bello. Ita.

Quo iure ortu sunt bella vniuersale caele. Ita.

Primo quo iure ortu et inducuntur et inducitur sit bellum
Secundo quibus licet inducere vniuersale bellum. subiungendo quod quos.
Tercio que sint agerecancia bellum. explicando per modum finis, acus, status, et in
 fieri per personarum bellum agerecancia, et formando quasdam habes circa ipsa. asterietis
Quarto que sit personae que accipiunt possunt ad bellum, et quod de accidentibus non
Quinto de his personis que sunt in bello et aliis quibusdam que in bello sunt.
Sexto per modum tabulle ad instructionem canonice de contingenti materia belli. quibus
 ubique in cor uis canonice tractata sunt per glo. et doctores remittam.
Redeo ad primum, et primo quero, quo iure ortum habet bellum. hoc autem diuino, et in
 gentium, iure diuino ut probat iosephus. primo regum. xxi. c. iure gentium. ff. de.
 iuri. et iure. l. ex hoc iure. **Q**uante iure diuino ortu fuit bellum vniuersale caele. Ita.
Rexi quod bella orta sunt iure diuino, ubi faciendum quod bella ne dum dno punitio primo
 posuit gerendo, gerendo inducuntur. et hoc demonstrari potest. nam omnis facilius
 tendens in bonum adeo posuit puenit. probatur maius. nam omnis datum operam et
 omne donum perfectum desursum est descendens apud luminem. iacob. i. i. q. i. que pro. probat
 minor, nam indicio belli, et bellum ipsum tendit in bonum. nam tendit in pacem et qui
 etiam vniuersum. hoc probat auctor augustinus ad bonifacium. sic inquentis. non enim bellum quo
 ritur, ut bellum exerceatur. sed bellum gerit ut pax queat. subdit episcopus bellando pacificus
 ut eos quos expugnas ad pacem ueritate uniendo pducas. sententia. xxiii. q. i. non est
 igitur finis belli pax et tranquillitas, unius. ergo inferitur, a deo originale et posuit
 puenisse. Confirmatur, nam omnis actus punitiuus malorum adeo puenit. probat maius na

in punitio nisi belli est actus punitiuus malorum et rebellium quod adeo posuit puenit

ut omis inanis inde regatur. Insuper q. altissimus natus in hoc inferiori mediante celesti
 et speculo corpore. illud aut totum corpus operatur mediante motu et lumine ut inquit de
 phs. Et quia in ipsa tota machina celesti sunt ptes diversae in pte influendo ut puta
 speras varietas, stellaz cursum et passas diversitas quibus p diversitatem varietatem
 naturaz et motu dependet effectus omne gentiu et corruptibile idcirco quilibet o
 rietas et naza varietas. Diversitas repugnancia hic inferius in pte dependens est d sup
 ex quo statim inferi q cu repugnancia et difformitas sunt inducitur bellu q bella inde
 oriuntur. Imo experientia docet q p uniformitate aspectu tpe naturis et difformi
 tatem insurgit in hoies nales dilectores et nales inimicos. Hic quilibet experit
 + na quis diligit suum cu videt nullis meritis precedentis et sic odio odit nullis
 demeritis precedentis sic in civitates et villas et castra impugnat dilectores et odia nali
 p uniformitate aspectu tpe qstruuntur eaz et sic impugnat odia et bella. Influentia
 celesti sic et amicitia et paces sic in ptiuas. Hic aut celesti na mediante motu
 est pductiva orationis et corruptoris in his inferioribus augmenta et diminutiones nedum in
 singulis sed in ptiis ymo in singulis mundi plagis nam ex hac supna na plaga hita
 biles sic sunt inhabitabiles et es nam uis doctrina phi ubi mare fiet aridum ubi
 aridum fiet mare ex hac naza repugnancia ac difformitate ex qua esse gentes et bella
 pncillaria et diversalia impugnat. Hic p motu et aspectu varietatem quendam exaltat
 quendam expugnat et quendam depmit. Mutat mundi regimina diversalia et pncillaria et
 ha monstrari pot. nam positi cu sufficienti pductiva alicui effus necesse est illum effem
 pna nisi ad sit aliqod expensum pndimentu pductoris. Na celestis gntue diffor
 mal motu et aspectu ipse pte sunt difformes ex sui na influendo ergo necesse est
 pducas hos effus repugnantes et difformes am no sit quod impedire possit. et sic inferi
 posset q nali. necesse est ee bella nec alit pcederet mundi gubernatio. propterea in
 p ha celestis na operatur in hoc inferiora non in p se et directo intellectu humano
 ymo durat libertas arbitrii. ut in c. nabuchodonosor. xxiii. q. iii. et c. deivus et
 de pe. di. q. c. sicut eni et phs. in ethicoz s operatur in organo virtutu sensitiuaz que
 recepta influentia administrant intellectum sic pndirectu insunt. hinc est quod scribit
 in li. centi uerboz na sapiens dicitur qstris. Equia hoc tractare nimis ellogatur
 attermine iuris no ulterius cura hanc ductionem insisto. si sufficiat illa ex pdis
 et demonstrati bella puenisse a deo positiue et effectus. Ex hoc ultio inferatur no imediate
 mediante machina celesti naturalis operando. Dixi q bella cognita sunt in d. h. d. h.
 hic in qstris q lz dicant iura q bella sint introducta in gentiu ut yfide. i. d. ius gen
 et hermoz. i. i. i. ex hac iure ff. de insti. xiii. in exco q bella ortu huerit no possi
 ex equitate nalis humane intelligencie cecate ymo pmodialit ex dispositioe nali nati
 + rante no possi influentis fm actus humanos ymo sup quibusdamqz aiat et ead ma
 nimat ut sit uerum deo q bella hant ortu ante nali ead ut distinguit ante gentiu
 quod quate diffit pbat. ex. in. l. i. g. me gen. ff. et g. me nali. et l. ex ha ur. ff. de iu.
 et ur. et l. d. me nali cu sua glo. et c. me nali. q ha sit uerum sic dicitur ex p
 capis nalis ead nali. exco est insita inclinatio nalis ad excludendum exclu
 sione ut amsp repugnans sue nali dispositio. hoc patet inducendo in singulis na
 libus simplibus et mixtis nam aque insitam est resistere igni et es p repugnancia
 qualitatis sit in singulis elementis na aque insiti igni resistere et es sic in mixtis
 media posset maxie ha quod patet in beatis ubi ex nali repugnancia pplexioni unu
 inclinatur nali ad occasione alterius et es sic in nali cecatura insita est inclinatio ania
 etia avasensio intellectualem dictamine ad p fugandum quodcuqz sibi repugnans. q
 ha sit uerum deo pbat. nam na omnium cecatoz pductiva no minus debuit ee in opua
 te ralis cecature q cecatoz pductiva. Cum pa sit nobilior ut c. cu infirmitas de pe.
 et rem. et l. sanamus c. de sa. san. et l. et ha ym ymago. xxii. q. vii. sic pducti
 ut l. in peridum ff. de iuris. et g. na induxit incli acem nalem in ceteris creatis
 ad quatuor que sibi gravia p fuganda pto magis ha debuit in conabili cecatura. hoc
 idem sensu patet p singulis supna dicens na quilibet ha in se ipo experit.
 si ha ex pnapis nalis hoi insita est. g. ex hac inclinatioe nali pmodialit hant omi

et difform
nam.

nature

Quilibet in gentiu ortu
hant bellu diversale an
male. ff.

diffinit

total

phora

et p ipam ut sine oia p
gloriam humanam

Dictame

Fig. 1

Co bello ~.
Lys.

gradus dicitur. In metallis autem ut opus metalli non depuratur, si dampnaretur non est per m
 lre si per hoste reputatur. ff. de re. mil. l. iij. §. i. et si a l. p. d. is qui et l. p. d. iores. Capite
 autem puniuntur qui propositio manus intulerint, qui inobedientes sunt. Qui fortianibus
 ceteris per fugam arripuerint. Exploratores qui secreta nuntiat hostibus. Calligatus q metu
 hostium infirmitatem simulavit. Qui comilitone gladio vulneravit. Qui sine causa se vul
 neravit, ut morte sibi qsuat, scias si bene tredo ut dolois impatencia, na tales infima
 notantur. p. d. iij. autem ut l. ascia lapsis, malitia mutatur. Qui non descendit propositu sui
 si ponit capite puniuntur, ei qui non ponit paratur. hoc hinc, ff. de re. mil. l. omne de
 licam. et l. iij. §. f. Item qui exploratores oblitavit hostibus insistentibus aut qui de fossato
 erit vocat capite puniuntur, eadem si se bñ gesserit. ff. de re. mil. l. iij. Item si gesserit
 arorem sedentem. Defor tpe belli capite puniuntur, tpe pacis, equis quatuor repellit, p. d.
 milia mutatur. ff. de re. mil. l. no omes. non omes tñ de fiores puniendi sunt equales. ff.
 de d. no gradu. ordinis superdior et aliar arcustanciar. qui excessit spaciū comitatus,
 ut emisor. ut de fiores reputatur. hinc tñ no dicitur quibz tardus, ut acius redit. ut si
 impedimento aliquo detentus. ff. de re. mil. l. iij. §. f. et l. qui comitatus, et l. no omes hinc
 eadē tñ an acte mte. Emisor est quidā vagatus acastus, ad ipa redit. Defor, q p pphū
 tpe vagatus, ad castra reducat. ut l. iij. §. emisor. ff. e. ti. Defor. si inulte iuchiatu
 capite puniuntur, alibi si p pma de fiores capitis iterato de fiores capite puniuntur. ff. e. ti. l. no
 omes. Defor de fiores bona qfiscantur. c. de re. mil. l. iij. De fortitudine, et ipi
 na et que fortitudo dicitur, morales, et que no et que fortitudo, bellum ducat ad fiores rectu
 et que non. ff. de fortitudo et arma, fundant bellum pnapalit. et q in iure no dicitur

Capite puniuntur.

Item miles mclator quos
 capite puniuntur, ff. de re
 mil. l. iij.

Emisor. Defor.

De fortitudine.

Sed quia dicitur manna fortitudinis, explicat, expedit q ipius na aliquate explicatur,
 et quere pma, an fortitudo sit virtus moralis, et appet q no. Nam fortitudo est
 dispositio corporalis, ut l. iij. c. de atletis, l. xj. ff. de hys qui no. msa. l. atletis, ff. ad l. iij. d. q.
 l. qua actio. §. si quis in colutata. de pu. induell. p. totu, c. de gladiatores, l. vna. de tornea.
 p. totu, ergo no est virtus moralis, cum dispositio corporalis, differat ab hinc seu dispositio
 hic et ipa sit inferior gradu. de pe. et. re. c. infirmitas, xij. q. i. p. pimus, xxij. q. iij.
 si hinc. c. de sa. san. eccl. l. sanamus. §. p. c. ois virtus moralis, est grectatur in passionibus
 et opatoibz, ut pbat pph. 2. ethicoz. §. fortitudo e grectatur in medio, ut idem pph. 3.
 ethicoz. dicitur sic, quod no est una virtus no est virtus pmo virtutes q plurales latius
 ad minus duos nro est qenta, ff. de testi. l. ubi nro. c. iij. q. iij. ubi nro et regula pluralis
 de reg. iur. l. iij. et qfirmat p dñm pph. po clenchor. na eadem est diffinitio ppositiois et uni
 ppositiois. §. fortitudo no est una virtus. pbat hoc minor. na vna virtus opponit duobz vicijs
 extremis no. xli. d. sepe. de qfuctudi. ex pte, §. fortitudinē opponitur, quatuor extrema. §.
 inamiditudo et timiditas. timor et audacia, et defectus in audendo qui est inotianis. ut pbat
 ter 3. ethi. qpositu pbat pph. 3. ethi. Pro soluce qois e aduertendum, q fortitudo sumitur
 equinat p fortitudina, quo idem est quod robur corporis. et fortitudinē que est virtus moralis
 pma e potentia qua quis pot mouere, ut pbat pph. po rectoru. et utraqz requirit in bello et
 sic supra sunt gnalit cu dixi q fortitudo seu virtus, et arma fundant bellum cu utraqz requirit
 p de pma que e robur corporis no e dubiu q no est virtus moralis p supra allegata, c. de pa
 et de ista psequamur, q pmas est plana lmpis et consoribz. Pro intellectu aut fortitudis
 ac est attendendum q in audendo et timendo, qtingit excedere et deficere, et utrobz male
 agere, qtingit et medie se hinc et sic virtute. differt in audacia et timore, Nam audacia e
 passio appetitus, irasibilis, pñ que inclinatur, ad agendum terribilia, ad agrediendum
 timor inclinatur ad fugiendum ut quilibz expiat, in se ipso. §. utruqz qtingit bñ agere, male
 Nam si quis uideat x. armatos et solus aggrediret cos male ageret et si no figeret male
 ageret, et sic male aca aggressura et male aca timore. Sic eia in timendo quis excedere
 pot. ut ecce si sit certu hoies in castris, et no uideant nisi centu si fugiant male agunt
 sic eia no agrediendum, ut si uiderint spoliari autat sine aggreddant male agunt. Sic
 inde excessum in no timendo, cu expedit in timendo cu no expedit. in aggreddendo cu no
 expedit et no aggreddendo cu expedit, et sic hinc uita extrema, audacia et timore, et utro
 bñ gradum ut oij. **S**olueris est notandum quibz est repive excessum extremoz ut
 aofum et utriusqz, ubi est repive medium bonu et laudabile, q si totu eet malu et ut
 utriusqz no possit dñi q defectus est inuapabile na defectus dicitur de fiores mali et sic o
 no fiores malu expedit ignau. q in medio sit bonu cui respectu unu dicit malu excedendo
 aliud deficiendo. Ex hys inferuntur, due conclusiones, p soluce qois. pa q fortitudo ac e
 virtus moralis, pa q est una virtus. pbat pma. Nam omis habuit elementu medij laudabile

due qdones

habet dicitur simpliciter bonus, et sine ipsis non. sic etiam dicitur Cardinales in dicitur iudicio meo. nomen supplet
 nam ipsi sunt mundi cardines, super quibus tota mundi gubernatio regitur, et regitur et ad ipsos spectat
 sustentare totum pondus mobilis gubernationis et motus ipsius firmum p[ro]p[ri]um foret. Dicitur, postea n[on]
 quanta est celestis n[on] et sufficiunt stabiles sunt, et immobiles firmant ordinem motus non deuant
 alio foris humani g[ra]tis. Monastica gubernatio quatuor cardinibus sunt quanta, sufficiat si m[un]di
 un[us] n[on] dicitur Varietas. Unde infirmitas. Unde tanta, acentio distincta, acenta ea non est noui
 arbitrii. In liberis autem posset fingere modum. Et quod de cardinalatu dicitur in tractatu de ecclesiastica
 censura nunc prius, et recto, ut distina p[ro]p[ri]a p[ro]p[ri]a. Et quod ut dicitur non h[ab]et ad plenam ex
 plicationem, nam uirtutem moralium cardinalium aliquantulum et succurre p[ro]p[ri]a p[ro]p[ri]a explicandam
 de eis tractando. **Quid sit virtus.** **¶** Sciendum est quod dicit philosophus. Virtus est habitus ellec
 tiuus. Et ut idem philosophus asserit 2. rectorie, omne quod est cadit sub electio[n]e, si eligibile est res p[ro]
 p[ri]a. **¶** De triplici specie boni, et qualiter virtutes cardinales ab eo efficiuntur. **¶** Bonum utile
 bonum delectabile, et bonum honestum. Et ista bona sunt p[er] electum appetibilia, et fugibilia et
 omnia virtutes morales circa ista tota uersantur. **¶** Explicemus unumquodque, et primo bonum utile
 circa quod uersatur, virtus altera de tribus moribus. Aut expendendo, aut accipiendo, aut consuando.
 plures actus electiuos non capiuntur homo in se ipso et ista deducta ab experientia est ualida, inquit
 ut patet in philosopho p[ri]mo p[ri]mo. In autem de moribus circa si. col. i. ff. de l. n. l. si choros s. h[ab]et uerbis
 C. de de. uel. em. l. y. g. que oia. de elec. q. sit. l. y. Expendendo, hoc contingit dupliciter. Aut
 enim expendit sua, aut aliena. Expendit sua, tunc circa ista expendendo uersatur. Virtus libe
 ralis et magnificencia, et uirtus op[er]um s. auaritia et prodigalitas parcencia et banuasia
 Si autem non sint sua, tunc potest distribuere illis quod sunt. et sic est iusticia. ut ff. de iur. et iur.
 l. iusticia. et infra e. n. s. iusticia. x. q. y. c. si de iusticia. Aut distribuit illis quod non sunt
 et tunc est iusticia, ut uerbis sancti allegans, aucto q. est ualidum ar. ut. l. i. g. huius re. ff. de
 offi. c. i. ou. man. e. uel. l. si p[ro]p[ri]a. s. inuolantes ff. man. et e. c. si apostolica de h[ab]et q. si. ap.
 et e. c. si uix de quersa. qui. In non reddendo h[ab]et quod sunt homo dicitur simpliciter malus, xij.
 q. iij. si uel. de uis. cum in. ff. de usufructu l. si quis. s. c. aut. Patet quod iusticia est cardinalis quia
 non habendo ipsam circa distributionem eorum que sua non sunt. homo est simpliciter malus, et liberalitas
 et magnificencia, que consistunt circa distributionem eorum que sua sunt non sunt cardinales, q. q.
 male distribuendo sua, non est simpliciter malus si tamen diceret furus, et sic habet una cardinalis
 s. iusticia, circa expeditum unius boni. Si autem virtus moralis uersatur, circa bonum utile in
 accipiendo, hoc contingit dupliciter dupliciter. Nam aut accipit que sua sunt aut uel debita aut ali
 ena. et si non debita, et sua uel sibi debita, et a quibus non debet peccat q. liberalitate et magnifi
 centia. non tamen est simpliciter malus. Si autem accipiat aliena, talis est simpliciter malus, sine
 est q. h[ab]et talem sunt ueris remedia, ut interdicta v[er]bi. vi. lo. rap. ut ff. et e. p[ro] illos n. p[ro]u.
 et q. dicitur ex legib[us] et cano[n]ib[us] que in singulis casib[us] explicantur p[er] varietatem casuum. actuum
 et sic p[er] expeditum huius p[ro]p[ri]a actus. s. acceptio. circa bonum utile appetit quod iusticia operatur tunc di
 naliatum non aut liberalitate sine magnificencia, et p[ro]p[ri]um iusticie dicitur simpliciter malus
 non aut p[ro]p[ri]um liberalitate uel magnificencia. Si autem uersatur virtus moralis in retinendo
 bonum utile, hoc etiam contingit dupliciter. Aut retinet et consuatur sua, aut retinet aliena p[ro]mo
 cili retinendo que sua sunt et nulli dandi, peccat q. liberalitate et magnificencia nec talis
 est simpliciter malus. Et si in istis o[mn]ibus uidetur pauperem indigentem et ad mortem et nichil
 det peccat mortale. Videtur potest quod tunc retinet non p[ro]p[ri]um si tunc. c. tunc talis necessitas si
 fienda co[n]s. v[er]bi. p[ro]bat elemens. v[er]bi. v[er]bi. x. q. i. dilectissimis et Augustinus ut transsumit. viij.
 de quo uel. et g. Si autem quis retinet aliena simpliciter est malus et iniustus appellat si tunc
 dicitur retinet, et remedia ueris, sunt p[ro]p[ri]a de quibus. C. circa igitur bonum utile etiam una
 solam virtutem, cardinalem tamen in distribuendo s. accipiendo, q. consuando, q. p[ro]p[ri]um op[er]um
 homo est simpliciter malus. Cardinalis est iusticia non cardinales, sunt liberalitas et magnifi
 centia et hoc clarum. **¶** Dicitur philosophus quod exat p[ro]p[ri]um bonum delectabile, circa quod uersatur virtus
 moralis, et circa hoc uersatur dupliciter, aut largiendo aut accipiendo. Si largiendo sic
 sunt virtutes, que sunt in ludis, ut si aliquis largitur alijs, h[ab]et delectabilem, et huius sunt
 amicitia, uisibilis, et curio[s]a. Iste autem uirtutes non sunt cardinales, quia non sunt de
 necessitate humane nature, quia multi sunt magni et uirtuosi qui in talib[us] nequeunt se h[ab]ere tamen
 Si autem suscipiend[um] et hoc dupliciter. Aut enim uersatur p[ro]p[ri]a delectabile, tunc dicitur
 simpliciter malus, et appellatur intemperantia, et dicitur male h[ab]ere excedendo nam insensibilis
 delectatur, non est simpliciter malus p[er]cedendo, et sic habet temperantia que operatur car
 dinalis, q. p[ro]p[ri]um op[er]um quod est simpliciter malus, et est de necessitate humane consuatio[n]is

(Cardinalis v[er]bi dicitur sic.

scit[ur] de ecc[lesiastica] censura.

ad experientia.

ad agere sensu.

Rica.

Rica.

Bonum utile.

Bonum delectabile.

Гонимъ хѣлѣу.

Lactator triple.

¶ fuit aliquale difpenfo ꝑ ꝑm
 ſubſtitutio qd nō reputatur
 iuriſtus nec alit̃ explicare nō
 potuit dñs & qua t̃ ꝑncipalis
 ꝑmo.

१२५५.

Car. Agius.

Car^m agn^a Destructio

Trypox malin.

ad ista se defendit p iusticia. xij. q. ij. cu duotissimam pot ead exemplum de fortitudine na fi
 p amore se defendit dubitat ab ista se defendit p fortitudine. ut in casu lucrecia et a. finge.
 xxxij. q. v. Si temptatur p delectabilia tuc defendit temperantia. xxxij. q. v. no pot. et a. nec
 solo. et a. qui interit et a. no mercedis. Sup munera tuc defendit iusticia q iustu est
 uendere bonu honestu tamq spiale. i. q. v. qua pro de symonia. p totu. Si filius vobis tuc de
 fendit prudentia et sic vna cardinalu firmat aiam. ut pferat bonu honestu utili. ut iusticia
 alia ut pferat delectabili. ut temperantia. alia ad substantiandum tristia p bonu tuendum
 et malu culpe excludendum ut fortitudo. prudentia aut ceteras regulat. sic d. et in
 cardinalibz. **V**olueris est est sciendum q bellum sumit duplicat. Vno mo p actu bellandi
 hinc inde. ut sumit p. de rap. et post h. reuer. l. m bello. et l. post amnu. e. de gladi. l. una. h. v.
 alio mo sumit p qualibz expectatoe corporalis pculi. ead sine sit actualis tuaspio et hoc si p
 alium eor au posset uerisimilit. refuta. al no eet bellum. ut in latrone suspendendo et alio
 iusticiando. Si bellum capiatu. p actuali tuaspione. hinc inde pta. fortitudo no est solim circa
 illa pcula. qntu no eet cardinalis. cu multi sint virtuosu qui no sunt in talibz expectatu.
 Si aut sumatur po mo tuc fortitudo uersatur circa illa pcula. qualibz sicut dicimus in
 muliere que sustinet pcula p tuotem caputano. ibi no est bellum pmo mo sumtu. si po sic
 et in est fortitudo. notandum in q fortitudo no est circa quelibz pcula. bellica nam si aliquis
 inuadat aliu et defendat se no est fortis. quia tuc tame eet fortis fortitudine. si qn sub
 stinet pericula bellica. p euitare malu culpe tuc est fortis. Unde dicit pph. qno est fortis
 p necessitate. hinc eam am. xxij. q. iij. nabucodonosor. et. a. de tyrie de pen. di. ij. sic
 et am. tunc qcluditur solo qois pposuer. cum qe an fortitudo sit circa pcula mortis et bellica.
 Et dicendum q no ut exemplum est in muliere. Secundo mo q extremus actus fortitudinis
 sit circa mortis pcula dicendum q sic. quia virtus est circa difficile. Tercio mo q inclinet
 ad substantiandum mortis pculu sicutu acuat. et dicendum q sic q virtus extenditur
 circa ultimam potentie. p. celi. et mundi. **Q**uod sit pnapalior actus fortitudinis. i. bello. r.
Et qe quid sit pnapalior fortitudinis bellum. an expectatio hostiu. an aggressio
 eor. Et ut q aggressio sit pnapalior actus fortitudinis. po. q. ut inquit pph. 2. ethy.
 tractatu de liberalitate. virtuosius est dare q accipere. recipit ead et. m. c. non
 sit manus tua porrecta. ad accipiendum et ad dandum colecta. hinc e q sal scilicet
 beatus est dace q accipere. xlvj. q. i. p dicitur. et de cel. mis. cu in archa. de dñ. c. i. de go.
 afimili virtuosius est agredi q expectare. quia agrediens dat. expectans recipit. pterea
 virtuosius est bñ facere. q bñ recipere. ut idem pph. probat nam si melius est facere q
 recipere. in gñe virtutu. ergo bene facere melius q bñ pati. q sequena tenet p locu agnoscis qd
 est ualidum ar. in pte. ff. de ne. ge. l. at qui na. in. di. deniq. v. di. q. de supflumte. et aggre
 diens bñ dat. expectans bñ recipit ergo virtuosius aggre. pterea melius e bñ opari q
 no opari turpe. ius illud. no suffiat abstinere amalo nisi quod bonu est faciamus. na et illud.
 si bñ opari bonu e mellore dicit sine cu in actibz is pnis ponderet. et ab illo fiat denigatio. q sequena
 tenet p locu afine. qui est ualidus in uice. ut ff. de ritu. nup. l. si quis ff. de iur. pter. no intelligit
 e si quis palam. ff. de con. pre. l. recipit. ff. de auro. 7. ar. l. et pno sint. e. pueniamus. et aggre
 di est bñ opari. expectare est no opari turpe. i. no fingere. q virtuosius aggre. q expectare. pterea
 id virtuosius est quod est difficilior. nam et leges rursus alie no emanat nisi sup difficult. et du
 biabili. ut l. quod labeo. ff. ad car. de car. edic. et l. i. in. ff. ad mun. et aggre. est difficilior
 q expectare. nam ho fessus expectare pot. no aut aggre. pbat maior. p eundem pph. tractatu
 de fortitudine. nam actus fortitudinis pbat est circa difficilia. et terribilia. pterea illud uirtu
 osius quod amabilius. na actus virtutu de sui na sunt amabiles. ut idem pph. et pbat hoc de pte
 di. ij. ergo et. a. corpus. 7. c. p. p. mo. et aggre. est amabilius q plures utilitates affert. rei pii
 et plura in eodem gñe pualent paunioribz. in aut de ofan. et uice. fca. i. in. de sen. exco. cu pta
 in. q. in. eno. l. eundam de offi. dele. prudentia in. q. inimicos expellere est ualidus q nos ex
 pectare. pterea illud virtuosius quod est laudabilius. quia virtus moralis est bonu laudabile
 si aggre. est laudabilius q expectare. na regularit. plis laudant. agredientes q fugientes
 In gñe. **I**n omni est rex. pph. e ethy. tractatu de fortitudine. Vbi dicit q pnapalior actus fortitudinis e
 substanti. Idem tenet ibi albertus. et Cuspiatus. Pro euidencia hui qois est aduertendum q
 pta dictamen recto vobis no est semp aggre. i. nec semp fugiendum. nec semp expectand
 nam qnqz expedit aggre. qnqz fugere. qnqz expectare. ex quo appet q fortitudinis triplex
 est actus. s. adgressura. fuga. et expectatio. Et q aliam fugiendu sit for. p. r. e. nam pcula
 sup hoem sunt fugienda. Si enim unus solus uelut aggre. mille. ul pps aggre. dicitur.
 expectare no eet forte. p. dux et temerarius. Et idem pph. ibidem. triplex est ergo actus for
 titudinis. s. adgre. fuga. et expectatio. et in istos minimus est fuga. hoc pbatu. nam ille
 actus est in ceteros minimus. qui in ceteros est minus difficilis. cu ars et disciplina sit
 circa difficilia. et fugere est facilius. q aggre. ul expectare ergo. pterea ille actus est

So. qois.

huc si in pte.

In gñe.

Bocha.

ff como. sup. h. r. a.

Ar. a. qnery. 2. d. columna pte.

Car. asme.

Crusqz leges emanat sup. difficile.

Complex act fortitudis.

Fuga e mini actus.

အိပ်. န ကိစ္စ.

supradictas.

supradictarū magis assimilatur vere fortitudini et que nō. nā omīs pter ultimā assimilantur
in eo q̄ facienter. et sic ultima ē minime similis in hoc q̄ elligens allic queniunt cū uera
pter illam que sit ex furore. in eo aut q̄ p bonū intencionem omīs diffiant auera. nā pā
est l. p bonū exstencionem ut pte glām. aliam p fugam pene. alia p lucra et stipendia.
alia p spem uincendi. prima aut politica. que est p honores et gloria magis asimila
uerit p fine honorabiliorē. nā honores sunt significatiui virtutis. et ista plūs opantur
tendendū ad bonū publicū. Nam uirtutes bellis insistant. ut exemplat p̄s d. hectorē
in bellicis sic se hnt. ¶ An forte in bello prius debeat mortē expectare q̄ fugere.
Tercio quero an forte in bello aliquo casu magis debeat mortē expectare q̄ fugere
de bello ubi p fugam euadere posse. Et ut q̄ nō sit mors expectanda. nam illud magis
magis eligendum quod est delectabilius. et illud minus quod minus p rectiorē dū
est p̄s. ex est delectabilior. uita q̄ mors. ergo elligibilis fugere et uiuere q̄ expectare
et mori. oppositi uē dicere p̄s. 2^o ethy. tractatu de fortitudine. et. 3^o tractatu de
luctu et uolento. et etiā tractatu de magnanimitate. ubi dicit q̄ p̄s est moriendū
q̄ aliquid tūpe gmutendum. 2^o p. euidencia q̄is est aduertendum q̄ q̄ p̄s hnt duplex
fundamentū. vnu uirtutis et fidei ut supponamus aliam uita et beatitudinem. et p̄m
hoc fundamentū q̄ nō hnt grande dubiū. nā si aliquis pugnaret q̄ infideles. et p̄m
fugam suam. multi p̄erent fideles et solus saluaretur. tunc p̄estelligenda ēet expectatio
et mors. et est cō nā fugiendo q̄sequit uita corporalem. expectando moriendo corporali q̄sequitur
uita aīe que est sine q̄parte nobilior. ergo pelligenda. Et fundamentū p̄s cō nā uita et uiuere
cum s̄m legem. nē. ut nō supnat ulteriores uita et tūc q̄ hnt dubiū et opimones uarias
aliqui dicūt q̄ mors expectanda. q̄ngere p̄m multiplicat. vno mō p̄euidencia certū sit mōres
euenire debet cū expectatōe. nec sp̄s sit de salute nisi cū fuga. alio mō q̄ l. sit aliqua eu
dena mortis in sp̄s aliqua hnt p̄s de uita sine fuga. Ito p̄o cū dicitur intelligendas
auices aristotilis. et aliorū p̄s quidnt q̄ magis moriendū. i. uirtutē pugnandū p̄m at
cū dnt nullo mō mortē expectandam. p̄bant hoc sic. nam de duobz malis minus malum
est eligendum. xij. di. nerui. et est p̄m p̄m morali. p̄m minus malū est fugere q̄ expectare
et mori. q̄ sit minus malū p̄batur. nam illud est minus malū p̄ quod pauciora bona p̄dunt
q̄ illud p̄ quod plura. p̄m in morte oīa tolluntur. in aut de nup. q̄ dicitur. et p̄o. p̄s in fuga
p̄dunt solum bonū fortitudinis. moralis. ergo p̄terea si melius ēet mori hoc ēet q̄ mori
ēet actus uirtutis. si hoc est falsum. nā actus uirtutis ul est felicitas. ul ad actū felicitatis
tendens. si mors est felicitatem destruens. q̄ p̄. si hoc cū elligenda. ēet mors. hoc ēet q̄
fortitudo que est uirtus moralis. ad hoc inclinaret. si hoc est falsum. nā uirtus moralis nō
tendit ad corruptiōem nē ymo ad q̄ uatōem ymo. nam ad hoc s̄m sint leges. xij. di. sic sit.
nūc p̄er p̄ bonū p̄p̄m aut alienū. non p̄p̄m q̄ in morte omē bonū exstinguitur. ut
cūp̄ taciū est. nō alienū q̄ nō tantū bonū alteri p̄t querere quātum sibi p̄dūt. cū s̄
fidem app̄t q̄ uirtuosissimi milites fugiebant in bello. ut t̄p̄e karoli magni. alii dicunt
p̄s. sat de necessitate se moriendū ēet. ex ergo moriendū forte nō p̄dūt nisi id in quo
credūt mortē p̄sente differet a futura. p̄s nō differūt in hoc quod est amittere bonū.
sic illud elligibilis est in quo plura bona adquirentur. et pauciora p̄dunt. sic arguit
ergo. p̄batur. hoc minor. nam si moriatur. querit actū fortitudinis. qui est nobilissimus si
maximū. nam certū est q̄ q̄sistentes. circa delectatōes corporales. magis elligerent modico.
Opimione p̄mā credo ueram. nam ut dī in alio articulo actus fortitudinis sūt adgressus.
fuga et expectatio. nā nō s̄m insequendum. nec semp fugiendum. nec semp expectandum. ymo
cum dicitur uis. ¶ An quibz una cū comitibus suis. uirtutē in hostes p̄sumens. et ip̄s
ducelatus mandauit ne quis p̄p̄et in hostes. sub pena capitis. Quidam strenuissimus mi
les cū magna comitibus militum quibz p̄erat q̄ mandatu duces prorupit in hostes et ip̄us
in bello. qui rē p̄p̄itam adice fecit aut mandatu nō suat capite p̄mitur. etiā s̄m bñ gessit
p̄ de re. mil. l. de fide et. in bello. p̄batur. p̄m que uolūt astrictōe obedientia. ad ip̄am
teneat. ff. man. l. si remunerandi. et si p̄gnus enl. si p̄cculus. ff. ad maced. l. si et si. et q̄.

p̄a.

p̄a.

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utriusq; an alteri et que unare. Appet q neutru cu qausu se impediunt. ff. de usus. l. quociens
 de pe. di. i. g. hoc idem. x. p. s. aut. x. p. q. i. c. i. Appet q utriusq; al pder feudum. qd difficultas pstatie
 ex pte pmissoris. no pmit obligatam ff. de uer. ob. l. omniue. q. illud. Item pte qus duob; dno s
 uideat ut ff. de op. h. l. duob; Quidam dicit latu ee exanficato. exenplo fm duob; dnoz qui s
 dicit q unabit pte dnm et cui p ueruit ut m bali feu. d. pbi. feu. ali. l. implem. g. illud. ff.
 l. ca. l. m opo. e. qui po. m p. ha. l. i. nam porem fidelitate puate tnt. l. d. q. tua tua. qui eteri.
 ul. co. Veniens Quidam m est q po puiat psonalit. eo p substituti sba panatur na feudi. c. d.
 eadi. col. l. una. g. fin aut nec ob. q ueruit fo. salua fidelitate pmi q est de na hore nolegri
 q p mende fo p substituti. no necet pmo quod saluati fuit. in iuramento fi. ¶ An vassallus
 teneat unare dnm q ptem ul pa qra filium. ¶ Quanto qd an vassallus teneatur unare
 dnm q ptem ul pater qm filium glo format qm. x. p. q. v. c. de forma. et tenet q sic. nam
 filius. solum unculo ne obligatus e pti. Et vassallus dno vnculo iuramenti ut m pal. c. de p
 hoc pbat ted m ufi feu. m e. queadmo. fer admi. glo. aliquat sentit qm m e. qm milites
 x. p. q. m. putarem ponderandum qualitate impendi subpdi. ¶ An cum duos amatum
 teneat una unare q alliam. ¶ Sexto qd an. cum duos amatum teneatur unare
 una qra alliam eo die ut dnm est m vassallo duos dnoz. ¶ An vassallus uocatus adno
 teneatur ipm sequi m pab; ultra maris. ad pugnandum q barbaros. ¶ Septio qd dno milit
 re ad ptes remotas. pone ultra mare ad pugnandum cum barbaris. inquit vassallus uocat
 ab eo teneat ipm sequi ad bellum. eo. fidus est mbe stans et qd dno q pdecessores sui
 et ipse qfuerunt illuc accedere. et vassalli ipm sequi et tuc tuc et liberti. qui tuc ad opas
 qfuerunt. ff. de opo. l. l. ope. et l. p. ff. de p. ac. l. qui dnufoz. pceptibutur m adno fipius
 moderari. arbitrio boni viri. Si aut sit mbe. qui no possit nec qfuerit. tuc secus. ff. de opo.
 l. l. q. m. g. fi. ff. de arb. l. si dno. g. si arbit. hoc etia tenent spec. m spec. ti de feu. g. ipm
 ¶ An sui teneant ubiq; sequi dnm ad bellum. ¶ Octauo qd dno. an. teneatur sequi dnm
 ubiq; ad bellum. de hys no est dubiu cum m cas dno plena hat potatem dno no no minus seniat
 m eos. ff. de hys qui s. sui. ul al. m. l. i. et n. ¶ An liberi dno teneat sequi patronu ad
 bellum. ¶ Nonio qd quid de liberis. eo. liberi teneatur ad opas solitas nec mspite
 possunt eis impo. ff. de opo. l. l. q. m. g. fi. ar. ff. de p. l. si fec. g. q. n. ¶ An agricole.
 uatati teneant sequi dnm ad bellum. ¶ Decimo qd quid de agricolis. an dno ad bellum adnu
 accedere teneantur. eo. agricole diuiduntur m ascriptos et censitos. ascripti dno pscripti
 solo ascripti vnde m aduentibus due mueniunt scripture. vna ad qstionidum. allia ad pbandum
 turis m. l. formis c. de ager. et cen. et m hoc et finis pene nulla est differentia. ut. l. ne dnu
 c. e. n. et dico pte q differunt. q fims allienari pti cu puallo. et sine. ut dnu. l. ne dnu. ascripti
 no sine solo. ut. l. y. c. e. ti. Item ascripti aia dmi uoluntate ordinari possunt m possessionibus
 quib; ascripti sunt. m aut. d. sanc. epi. g. ascriptos. sui aut no. Item ascripti facit et tacite
 dno et mtenib; liberant a fims qd dno. ut m aut. d. m. p. g. fimo. Ex quib; luce clarius apper quib; t
 dno ad exenat honera psonalia no arant nisi ex quento aliud sit mductum. Censi aut sunt
 qui certe rei annuam pstante qstunt sunt. e. qui ca. col. l. y. Etia m hoc differunt ab ascriptis
 et d. hys mfer ut dnu. pba mfer q nec coloni nec mquib; necno actum possunt ¶ An
 qfederatos. possit dno uocare ut ipm muent m bello. ¶ Undecimo qd quid de qfederatis et
 coligatis. inquit dno poterit qfederatos suos. puocare ad bellum ut ipm unare teneant. eo. qfe
 derati sunt plene liberi l. ad aliqua teneant ex pto. ut. l. no dubito. ff. de cap. et p. re. m hys
 et. l. i. d. pte. ¶ An subdia voc m iudicio tnmno teneantur ad bellum accedere. ¶ Duodecimo
 qd quid de hys qui voc m iudicio tnmno teneantur ad bellum accedere. ¶ Quodam
 tenetur nec agent ad pda quia. hoc facit ex debito. fallit hoc regulare dny m quibusdam
 psonis que excusant a munerib; psonalib;. quoz quidam excusantur. etate. ut m miores. et senac
 Quidam liberis mto. ut e. qui nu. l. p. totu. Quidam p qfessione. ut e. d. p. et me. Quidam
 seu ut mulieres et qsimiles. al stat regula. ¶ De psonis no ascriens ad bellum liberi ac
 cedent. ¶

P. ca.
 q. 90

P. ca.
 G. qd.
 P. ca.
 A. qd.

P. ca.

P. ca.

De ascriptis.

De fuis.

De censitis.

De psonis q excusant a munerib; psonalib;.

De agendis.

Et aut dicta sunt de hys psonis que sunt qualiterq; ascripte. Restat uidere de psonis plene
 liberis ad bellum puocatis. ¶ Pro au euidencia e attendendu q accedentib; ad bellum no
 necessitate nec debito necno an et debito. accedentib; e tactu est. Quidam accedunt plena libera

de mătrea medicată stăruie și
voluntă pură.

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[illegible]

Comes lando.

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corporali bellare et c. **I**n licet bello coram defendere possit ecclesia et sup hoc quocumque
 militis plani q sic p bant exp. xxij. q. iij. e. marinianus. xv. q. ij. auctoritate. lxxij. di.
 adrianus. xxij. q. viij. c. igitur et c. verum et glo. magna in cap. autem. q. ij. pbat et exp.
 in c. dilectus de sen. exco. li. ij. **I**n licet episcopus ad bellum accedere sine licentia pape.
In licet episcopus ad bellum accedere sine licentia pape dicunt quidam indistincte q no
 p cas. qui uident hoc esse dicere. xxij. q. viij. quo casu. et c. finobis. et c. si quis episcopus.
 hulla. e. hanc uarios intellegunt in hoc ordo uerum succent ul sponce ad bella allicia
 maxime secularia accedunt secus si defendant uera sua. **I**n prelati p prialibz que tenet
 ab impatore et c. **I**n prelati p prialibz que tenet ab impatore teneant solvere tributum
 p bellis ab eo indictis et dicendum q ut p batur. xxij. q. viij. a. g. ecce. cu duobz et sequentibz
 usq ad g. fine. **I**n capite in bello uiso sit misendum. **I**n capite in bello uiso sit
 misendum dicendum q sic nisi pendo tuncat p uerbato paco p batur. in c. noli. xxij. q. i.
 in fi. et p illud c. expostui ut intelligat hanc. fuit arripuit caput Coradino **I**n
 ecclesia debent indicere bellum contra iudeos. **I**n ecclesia bellum debent indicere contra iudeos
 dicendum q no cum ubiq parati sint purre nec p sequantur xpianos secus de finicene
 quic xpianos p secantur hie est tex. xxij. q. viij. diffare. et ibi notat glo. q nec ena paracene
 pnt indicenda nisi xpianos p sequeantur. **I**n degentes in bello qui pugnare no possunt.
In degentes in bello qui pugnare no possunt gaudeant immunitate bellantiu **I**n
 die q sic dnm mo al q salio sine uites. ut no. in c. ex multa. de doto. **I**n licet platea
 episcopus iurisdictionis etc. **I**n licet prelati vce tyralis iurisdictionis bella indicere
 et eis mercede et alios pcurari ad pcedum et dic q sic ut no. moct in c. qm dubijs.
 de pmo. **I**n licet plato p iurisdictionis et c. **I**n licet plato p iurisdictionis subdia sui
 de qua no sit iusticia bellum indicere et alios q iniuriantes in bello capere et dic q sic
 ut no. moct in c. dilectus de app. et c. pcur de iur. iur. **I**n delegatus pape possit bel
 lum indicere hoc est dce ay possit inuocare brachiu secularis. questio est. vulgata et
 tractat in c. significasti de offi. dele. p moct. **I**n bella indicta p ecclesiam q excoicatos sit
 meritoria. **I**n bella que indicat ecclesia q excoicatos sint meritoria. et dicendum q
 sic et in illis licet sit plato et alios singulis pcurari alios ad pugnandum p bant. retez
 xxij. q. v. ad omnes et c. sequit et. q. viij. c. igitur. usq ad g. ecce. et q. iij. c. pcur exco
 leniam. **Q**uot sint gna bellorum corporaliu. **C**onsequet q quot sint gna bellorum
 corporaliu de quibz regitur in iure exp sum. do. vi. regitur. uice exp sum. Primu
 romanu appellatur quod fideles contra infideles et hoc iusti est. de hinc. excoicatis. in
 et dicit romanu q roma capud fidei. xxij. q. i. hoc est fides et c. qm. de suma. ter. e. p. et sic
 pot intelligi. l. hostes. ff. de cap. et post. re. **S**ecundum quod sit iustis iudicis legipm hinc me
 impia q germaes. et rebelles. ut l. qmct. ff. de me. ca. l. iij. et l. iij. ff. de iur. o. iudi. c. ne
 quis in sua ca. l. una. et hy p pcur no dicitur. hostes. nam quod de suo ad nos puenit non
 efficitur non aut. q. sic intelligit. l. i. g. in pace. ff. de cap. **T**ercia dicit bellum p pcursum
 quod facit iudicis molestantes de pen. di. n. g. i. ad fine. de ma. et. o. a. si quis venerit
 ff. de rei uen. l. qui restitueret. ff. ne ius. fiat. a. q. in po. mi. l. iij. c. de pda. li. iij. fi. **Q**uatu
 dicit bellum quod facit est quicq iuris aucto pceditur et est statui quo ad illum cui qe
 dicitur ut xxij. q. ij. c. fadiis. de sen. exco. fmo. i. g. nec ille. c. q. h. bni. sine iudi. se um. li.
 et l. ij. et oia p pcur et pcur. ut de sen. exco. dilecto li. ij. **Q**uatu mltati quo ad illos
 hoc facit q iuris auctum. de qui se defendit q iudicis auctum et iuris. ut de sen. exco. p pcur
 dimus. et c. gangit. et c. in audientia. **S**extum dicitur quo uirtute pnapis secularis
 nli tyris sint pnapis aucto et hoc iusti q nec sint pnapis aucto licet arma p pcur
 c. ut ar. usq in rubro et negro. li. iij. in aut. de man. p. col. in in aut de armis. ad g.
 ymo q pcurat modum. l. iul. ma. ff. ad l. iul. maue. l. iij. **S**extum dicitur necum et statui
 quod facit fideles iuris aucto se defendendo. q ipse iniuriantes na dim di. repellere licet
 ff. de iust. et iur. l. i. ut viij. cu sy. de hys p hostem. de homie. p humanu. li. ij. p. dech. in c.
 iustum. xxij. q. ij. **E**x his inferunt que bella sint licita et que illicita nam licita dicitur
 re indicente illius q que rei et aut et uice p pcurante. Inlicita e. causa aut bna
 gnalis iustificat. f. germaia iniuste resistentis. Cum eni ab eo qui obnoxius est iust
 cia hui no pot ius licet bellum indicere nam in subpdu reuertit ad illud suffragiu
 xxij. q. i. quid culpatur et c. noli. xxij. q. viij. si nulla. ff. de usuf. l. si iustificatus. et de
 hoc. f. q sit statui notat p moct de resu. spo. cu olim. i. p hostem infama. de treu. et pace.
 q. quid si iust. p beati thoma in pa. p. q. xl. articulo po. po. et. iij. p. q. iij. in libro de
 regimine pnapum in fine. **D**e bello pnculari quod sit ob ciuitatem sui et est i
 quatuor tractatus teray pnapalis. p pcur.

Condu. 2 d. fo. 21. iij.

q bella sit licita. 2 q illu

De bello yonulaxi.

Ullo eūp certo pmo tractatu pmapali de bello vniuersali cōsi. restat nūc quarto videlicet de bello pnculari quod fit ob tuclam sui. et in ipius tractatu sic pcedam. nam pmo demonstrabo quod fit. Seco quot sint spēs eius. Tercio quo ordine indicat fit. Quarto quibz liceat puenire q. quod. Sexto p quibz liceat. Septimo quatu liceat. Octauo que sit ipius finis. Quid sit pnculare bellum. Et c.

Quid sit p^riculare bellum. *Secundum*
Questio prima cum quaeritur quid sit p^riculare bellum est quod dicitur exorta p^r diffinitione humane agendi p^rec^r
 sentationem et violentiam p^riculare illatam pueriens ad ipse exclusionem tendens. hoc p^rbat^r
 mentaliter p^r textum. l. ut v^rim. ff. de iust. et iur. e. l. qui sciam q^r qui cu^r alit^r ff. ad. l. ad quib^r et
 l. i. c. v^r v^r et l. i. m. s. si quis ff. de vi et vi. ac. et c. olim. de res. spo. et dicitur quod dicitur nam
 quod dicitur p^riculare p^riculare ut p^ricula est in diffinitione bellig^rualit^r sup^rra. ut o^r p^rimo tractatu i^r p^ro. p^ro
 dicitur exorta p^r diffinitione et c. et illud p^ro loco differentie nam p^r hoc differt a bello vniuersali
 et alijs p^recibus belli. Secundo dicitur ad ipse et c. hoc est a finali ipse belli.

Quot sint species particularis belli. Etiam.
Tres sunt, cum quod quot sint ipse species dicitur, quod sunt due. nam quoddam iustum, quoddam iniustum, ut circa iustum bellum iudiciale. Bellum autem particulare iustum est duplex. nam quoddam fit pro tutela veri corporis, vel ad adherendum sive quingentum veri corporis. de hoc in presentia tractatum distinetur. aliud fit pro tutela corporis iustitiae, vel pro ut damus in beneficium, que appellatur corpus et singuli appellantur membra et pars, scilicet quod aliquod membrum. scilicet ad municipium. scilicet quod maior pars de iure uero. scilicet si hac quod qui manu mittit, de exte. preda. scilicet in dilecta, et ibi non. si igitur dicitur ueritas, pro defensionem a iure sui ab exerceat opprobrii deficiente iustitia iudicis opprobrii bellum indicat hoc appellatur, particulare pro tutelam iustitiae corporis, sive pars, et hoc appellatur, particulare repassalia de qua mox ut non fiant pignora. pro totum. de iure. e. uno pro totum. scilicet de. et de hoc bello dicitur. igitur tractatum proinde bellum autem iustum particulare, ob tutelam veri corporis indicatum est quoniam exorta pro diffinitione humano appetitui presentium, pueniens ex illata uolentiae particulare, apuam, vel publica persona ex officio iniuste inferente, ad ipse exclusionem tendens, cum moderamine inculpate tuelle, ut hoc plantatur, in. scilicet e. in. vi. cum ibi non. iniustum autem est ubi preda vel aliquod predam depauperat, ut in precedenti declarabitur.

Quo uice introductu sit pncipale bellum. Rp.
Intra tercia cu qd. quo uice ha puenit et operat glo. que est m. l. ut dicit. ff. de insti.
et uice. sup uerbo uice. dicit uice fore no uice celi. siglo. intelligit q uice fore pue
nat ha bellum cedit q glo. no dicit uerum. ex aut glo. intelligit quare fore india possit impune
cedit q glo. dicit uerum. In eo aut q glo. dicit no uice celi cedit q glo. dicit falsum. Redeo
ad singula et dico q bellum ob tutelam sui puenit auro nali. no aut auro postremo cuius
il canonico. q ha sit uerum pbatu sic. nam na pductua. cuiusq tendit in pue q suatorem
donec se existimant duces naturales agentis. et natiue. in expulsioue cuiusq qm. et
pseant qingit ha qingit p defectu uerum nali. agentis. et sup habundantia agentiu in
grauu. nequaq aut ha qingit ex intentione agentis. nali. pductui et q suatui. ymo q
intentionem cu semp qm respicit. qm pot. ha pz et sensatus. inducend p singula nalia na
in elementalib que agut et patiuntur. adiuuat ha pz. na passim respicit agentia et reagut
in ipm solum ad q suatorem. ad fine q suatois sui et et destructoem agentis in qm. et agens
corporale materiale semp agend respicitur. ut inquit pto. 3. ptoz et po de gen atre. ha
pater in ipso in arate. ha in plantis. na puaa ipaz natura. tendit in q suatoem ipaz et
uam et qm ex pultione ha in brutis. et qe no sic in rationali creatura. ha qingit ymo
fortius. cu ipa ceteris sit nobilior. et in ipam ut fine alia ordinent. ff. de usis. l. in pcedim
puenit ergo ad defensa ex instanti nali. ha pbat ter. m. clem. pastoralis. f. cetero de re. iudi. ibi
dicit ter. q defensionis. que aui puenit naturali. ha sententia me glo. que est. m. l. sciam. f.
qui cu alie. ff. ad l. ad quib. ibi dicit glo. uia pmitit eo ipso qm phibent. ha pbat ter. m.
dem pastoralis. f. cetero de re. iudi. l. itaq. ff. ad l. ad quib. ibi dicit ter. ad ius pncipale
nalis eo defendere pmitit. Conclud q ex ha passu q ha bellum restringend ad iudic
tum ob tutelam corpis sui puenit ex ur nali et ipius. instanti. si me postum ipbat ul
no phibet. ut dicit glo. m. l. sciam. f. qui cu alie. nam aliqua puenientia instanti ne. uice
postuma pmitit ut pater. in carnali opula. na simpliciter cohitus. puenit ex nali instanti. si
in quosdam cohitus dypnat lex. et in ha me postum limitat et qualifia actus puenientes.
+ aui nali. sic in singulis actib aui puenientib. nam nali. que agut adu et pti et tam
lex canonica limitat. nam quosdam alios cernit ipm phibet. mhibet. Veru est q lex postuma
eaa qualifia. modum defense. ut pz m. l. i. e. unde vi. et patebit p infra notanda. Concludit
ignur. ha puenire aui nali p approbato aui postumo. cum tui q canonico. et etiam
qualifia et modifia eodem. et in ha forte saluari pot glo. que est m. l. ut uim. ut sic in
telligatur. glo dicitur glo. no uice celi vñ sententia glo. q uice diuino. no pmititur. uim vi
rephere. p hac opi. glo. uident facere ter. na scribit luc. vi. si quis te percussit in una maxilla

Unusquisque appetit corp?

3. Zellen abwechselnd mit/ohne Zucker
nähren.

Carfom pruit a pue nãh.

¶ Cum p[ro]p[ri]e licet hoc p[ro]curare bellum indere,

Circa quartum videlicet quibus queratur et dicatur est dicendum. prout ostenditur primo, quod aliud
est querere quibus queratur defensio sui corporis ipsius, et aliud est querere quibus queratur bellum
diffinitum, inditum per defensam. Erueamus, cui queratur defensio dico quod omnibus entibus naturalibus
et corruptibilibus. Et dico gentibus et corruptibilibus. nam corporibus celestibus non queratur defensio, pro
quod non possunt pati ab aliquo, a quo ageretur, cum illa corpora non sint receptiva perennitatis imper
tionum ut aut prius per celum et mundum. cum sint sine materia que est mater generationis et corruptionis
ut ibidem et sic non est opus defensio, cum sint impassibilia omnibus aut materialibus queratur ex
vnaparte naturalis defensio, cum sint passibilia, et puerit illa defensio, ex parte naturalis quod est vix
quedam insatiabilis, similia et similibus, precantur na similia precando quod fiat in se ipsum quod
fieri non potest per se individualiter, et circa individualiter agendum intencio, corpus gentium sibi reser
uante, et cetera. Et iste est primus modus iuris naturalis de quo glo. in e. ius naturale. i. d. et notum
quod in l. i. s. ius naturale per de iust. et iur. sic ergo. in defensio queratur quibusque materialibus
naturalibus et puerit ex vtriusque aia naturalibus, entibus infinite, ut quibus posset sensuale inducere, per singula
naturalia discernendo. Erant queramus quibus queratur bellum super diffinitum tunc dico quod solo hominibus

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utriusq; an alteri et que unare. Appet q neutru cu qursu se impediant. ff. de usuf. l. quociens
 de pe. di. i. g. hoc idem. x. p. s. art. xx. q. i. c. i. Appet q iure iur. al pter feudum qd difficulte pstatore
 expte pmissoris no pmit obligatam ff. de uer. ob. l. othmme. & illud. Item rei que duobus dno s
 inter. ut ff. de op. li. l. duos. Quidam dicit loci ee quantificatio. exemplo fm duos dnos qui s
 uiderit utriusq; dnm interfici unare poterit que uoluit ff. ad sil. l. si quis in grau. & ai. eccosali.
 dicit q unabit pte dnm et cui p uirauit ut in bsh feu. de pbi. feu. ali. l. impialem. & illud. ff.
 loca. l. in opo. & qui po. in p. ba. l. i. nam porem fidelitate suare tnt. l. di. quia tua. qui ceteri.
 ul. d. veniens. Quidam m est q po suat psonalit. eo p substitutu siba paratur na studi. Cde
 adu. ad l. una. & si aut nec ob. q uirauit fo. salua fidelitate pmi q est de na hore nolenti
 q p mendo fo p substitutu no naet pmo quod saluati fut. in iuramento fi. An Bassallus
 teneat unare dnm q prem ul pa qia filium. Quinto q an Bassallus teneatur unare
 dnm q prem sil pater. qm filium glo format qm. xx. q. v. c. de forma. et tenet q sic. nam
 filius. solum unculo ne obligatus e pri. Et Bassallus dno unculo iuramenti ut in pal. c. de for
 hoc pbat tel m usi. feu. in c. queadmo. feu. admi. glo. aliquale sentit qm in c. qm milites
 xi. q. iii. putuem ponderandam qualitate impendendi subady. An cius duos ciuitati teneatur unare
 teneat una unare q asiam. r. Sexto q an cius duos ciuitati teneatur unare
 teneatur ipm sequi m pab. utramarum ad pugnandum q barbaros. Septimo q dno milit
 ut ad ptes remotas pone ultra mare ad pugnandum cum barbaris. inquit Bassallus uocat
 ab eo teneat ipm sequi ad bellum. eo. si dno est talis status et qdicio q pdecessores sui
 et ipse qsienerit illuc accedere. et Bassallus ipm sequi et tuc tnt ee liberti. qui tnt ad opas
 qsienerit. ff. de opo. l. i. l. ope. et l. p. ff. de m. ac. l. qui vnuisoz. prestabunt m adno fuptus
 l. l. q msi. & si. ff. de arb. l. si dno. & si arduis. hoc etia tngit spet. m spet. ti de feu. & ipm
 l. l. q msi. & si. ff. de arb. l. si dno. & si arduis. hoc etia tngit spet. m spet. ti de feu. & ipm
 An sui teneant ubiq sequi dnm ad bellum. r. Octauo q dno pnt. a. teneatur sequi dnm
 ubiq ad bellum. de hys no est dubiu cum m eis dno plena hat potatem dno no no minus seniat
 in eos. ff. de hys qui s. sui. ul. al. ut. l. i. et ii. An liberti dnt teneat sequi patronu ad
 bellum. r. Nono q quid de libertis. eo. liberti teneantur ad opas solius nec m pchic
 possunt eis imponi. ff. de opo. l. i. l. q msi. & si. ar. ff. de pnt. l. si hoc. & si ii. An agricole.
 accedat teneantur. eo. Agricole diuiduntur in ascriptos et censitos. ascripti dnt pscripti
 solo ascripti unde m aduentus die mtenent scripture. vna ad qstio. ordm. alia ad pbandam
 prima qua pmitit dno soli nng. a solo recedere. alia qua pntetur se ascriptu et de hys scrip
 tura m l. farrus. c. de agri. et cen. de mt hos et suos pene nulla est differetia. ut. l. ne diu
 c. e. ti. et dico pnt q differunt. q sunt ascripti pnt cu recullo. et sine. ut dnt. l. ne diu. ascripti
 no sine solo. ut. l. y. c. e. ti. Item ascripti acia dnt uoluntate ordinari possunt m possessionibus
 quibz ascripti sunt m aut. de sanc. epi. & ascriptos. sui aut no. Item ascripti facit et tacente
 dno qstuant m. nec qdactm mutant. ut c. de agri. et cen. l. ult. sui aut qstuant facit et tacente
 dno et tacente liberant. ascripti qstuant. ut m aut. de mup. & smo. Ex quibz luce clauis app. quibz t
 quibz ascripti sunt m aut. de sanc. epi. & ascriptos. sui aut no. Item ascripti facit et tacente
 dno et tacente liberant. ascripti qstuant. ut m aut. de mup. & smo. Ex quibz luce clauis app. quibz t
 dno ad cenea honera psonalia no arant nisi ex quente allud sit inductum. Censiti aut sunt
 qui certe rei annuatim pstante qstunt sunt. & qui ca. col. l. y. Etia m hoc differunt ab ascriptis
 quia ascripti sunt ascripti ad. etia re pbandam puta tercia ul quarta fructu. In aut certe rei
 c. de hys mfer. ut sup. pbat mfer. q nec colom nec mquibz necio actum possunt. An
 qfederatos possit dno uocare ut ipm muent m bello. r. r. Undecimo q quid de qfederatis et
 colligat. nuquid dno poterit qfederatos suos puocare ad bellum ut ipm unare teneant. r. qse
 derat sunt plene liberti l. ad aliqua teneant. ex pto. ut. l. no dubito. ff. de cap. et p. re. in hys
 et. l. i. de pte. An subdia voc m iudicio immod sunt subdia no aut sunt Bassalli. eo. tales accedere
 q quid de hys qui voc m iudicio immod sunt subdia no aut sunt Bassalli. eo. tales accedere
 tenetur nec agent ad pntia quia. hoc facit q debito fallit hoc remulare dnt m quibusdam
 psonis que exasant a muneribz psonalibz. quoz quidam excusantur. etate. ut minores. & senes
 tunc granat. ut c. qui eta. in rubro et nigro. Quidam infirmitate. ut c. qui morbo. p totu
 Quidam liberos mto. ut c. qui nu. l. p totu. Quidam p pessione. ut c. de p. et me. Quidam
 seu ut mulieres et ofimiles. al stat. regula. An psonis no ascriptis ad bellum liberti ac
 cedent. r.

p. ca.
 q. qo

p. ca.
 G. qo.
 p. ca.
 A. qo.

p. ca.

p. ca.

de ascriptis.

de pnt.

de censitis.

de pnt. q excusant a
 muneribz psonalibz.

de agnatis.

Et aut dicta sunt de hys psonis que sunt qualiterq; ascripte restat uidere de psonis plene
 libertis ad bellum puocare. Pro au euidencia c attendendu q accedentibz ad bellum no
 necessitate nec debito necio an et debito accedentibz c tactu est. Quidam accedunt plena libera
 ra de

utro medicare alium q̃
istis puz.

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obfcuras me xpianis quatuor ad psonas no fual postliminū nec vendunt p fone nec pue effi-
cuntur. ff. de capm in bello efficiantur capientiu. ff. in capm in bello efficiantur capientiu et
ut qno sic. p. l. f. q. in bello. ff. de capm in bello. ff. de capm in bello. ff. de capm in bello. ff. de capm in bello.
loquit in rebz mobilibz qria de immobilibz ff. op. f. q. mobilia publicentur. ut. e. dicit. xxij. q. d. eo.
dico q efficiantur capientis. si tñ ea assignare dicit belli qui distribuet p m merita. et hec uedi-
ant sibi laci m hys inqmbz no hñ laci postliminū. ut. l. ij. ff. de capm. ff. in bello sic laci
insidiari. ff. pterea qd an in bello sic laci ut insidijs ad dicitur q sequendum de q sic. nam
inquit agustin in li. qom. Cum bellum insu suscipitur. utru apte pugnet quis an insidijs nichil
ad insidia interest. hñ pbat p id quod hñc iohes. viij. c. In qm. uidetur. nam scribit. de utro no.
xij. quod iustu est iuste exequens. si p insidias exequi est iuste exequi cu sapiat dñm et
tali agnata. p ac. de dolo. refutatur. ut. ff. de dolo. e. n. p. totu. pterea insidie repugnat
felicitati. et rumpit fidem que seruanda e. etia hosti. ut augl. ad bonifaciu. et transfert in am
xxij. q. i. noli. xxij. q. v. quod dñs paret. p. scribitur. math. viij. c. que uultis ut faciant
uobis hñes. uos eisdem facite. et in pn. decetoz. et hec obfcurandum ad omz pmos. Cum
ignare. nullus uellet insidias sibi fieri. ergo nec alijs facere dñs. hñ attendendu est q
q ppter insidie dicitur. que tendunt ad fallendum aliquem. q. duplicat q tangit aliquem falli
uero ul fco alterius. vno mō p dicitur fallum ut dñpatur. ul ut aliquid pmissum no attendat
et tñ sic utendo insidijs. semp est illudcu nā mō hostes sunt quodam federa. que seruanda sunt
ut inquit ambrorij. q. d. offie. alio mō pō falli dñs ul fco nō qd no opimus sibi ppterum
nom nec secreta nra et hñ mō licet fallere. nam nec semp secreta facere scripturæ sunt pa-
denta. ne uideant. mō illud math. x. c. noli sñm dñe ambr. hñ ymo hñ est ppterum madam
mō multum documenta. ut secreta nā reuelent hostibz et sic eadē dñminat. dñs thomas
pa. p. qd. xl. et glo. xxij. q. ij. e. dñs. dicit indistincte uiri posse. dñmō nō cū pimus fidem
ut. e. noli eadē ca. et q. i. hñ idē tñ glo. ij. c. ult. xxij. q. ij. allegat am in mandatis. xxij.
di. ff. de cap. l. nichil interest. e. de emer. l. ij. xij. q. ij. dñpiti de qsera. di. ij. dñpiti dñs
ff. in bello sic laci sic bellat. ff. consequet. qd an in bello sic laciandum. et ut q no. nā psta sñ
inducta. ut quis uacet dñmō de qsera. di. ij. s. pñuandum de pñ. e. ult. d. e. n. l. dñs. et
l. ultima. et pbat. quod. xx. c. pterea pñe. dñm. c. refutatur qui indictz ieiunij reperi de-
bita. et omittit lites. pugne pñentes. qulto mag. ignare. in pñs bellantes sunt refutent
pterea nichil modum agendum e. ad seruandum tyale in modum. ergo. p. ut ego. in. e. i.
de tece. et pa. In qm. nō. nā legu. pñmāch. y. c. Cogitauerunt laudabile dicentes. omz
homo qui uenit ad nos in die belli. indie saluatur pñemus adhuc cu. dñs. dñs thomas
pa. p. qd. xl. tñ q m pñs bellat possit necitate uigente. ipa aut affant capndu est
quod pbat p id quod hñc. jo. di. c. mch indignamini qui totu hñem sanam in sabato. et
sic mñt medicos medicari posse p salute puata hñs. qulto magis aut pñanda
e. ualens. publica. dñf. et hostem. in. e. i. de tece. et pa. dñt q de ioms nō est bel-
+ landum q dñs illa die adscendit ad celos. et cenā fecit cu discipulis. de. q. i. pñs. et
de. q. di. ij. lites. Die veniens nō p reuerentia pñoms dñi. Die sabati nō q discipuli
e. dñe. laci. ut p mēu. mñtop. et q corpus dñi laciut in sepulcro. de. q. di. ij. sabato.
Die dñs nō q fere omē mñgne. pñat dñs illa die. lxxv. di. quod die. et p reuerentiam
reuerentis. Exed ponderandum necessitate uigente ut s. tacu. est. de. nicola. ff. est in
e. nulla. xxij. q. di. ff. an qseratus in bello totu pñ mñsse. possit ut p adfauu et e.
Consequent qd quid saliquis in bello. qseratus est totu interest pñ an ut pñt in
uicias quere adfauu pñi ul adhuc possit bellum indicare q. ca. de q. i. quere possit
nā capm in bello. est pena qumate. ergo nichilominus agere pñ. pñ. tal. q. l. laci. g.
p. i. rem res nō est soluta p debis. ymo in bello quesunt dñm. xxij. q. v. dñat. et q. viij. f. de
redas. ff. de adque. re. d. p. nali. pñ quia qd qumate uirari pñt in mñm. ff. de re. ut.
l. qui refutere. glo. in. e. dñs. xxij. q. ij. tenet qmā. p regula. bona fides. ff. de re. ut. ego
nō accedo glo. uera indistincte. ymo dñsangu. dñ an ab eodem. an ab alijs. et ab eodem pñat
pñ. jo. dñ ab alijs aut fñabz am ab eo. et tñc idē. ut. e. de euct. l. empti. ul fñet. reges
fñm q pñm. ut. e. de upre. xij. uidi. l. ij. g. pñ. All aut laci est plures idē solui. ut. l. ij. g. q.
temperatio. pñ. de in. ex. et mñ. de legat. g. fñes. sic. no. glo. in. regula. bona fides. ff. de reg. ut.
et in oia. no. jo. fñu. mñs. e. dñs. ff. an morientes in bello saluent. ff. an morientes in bello
saluent. jo. morientes in bello eadē pñmō dñstione. qsequuntur. celest. regnū. hñ pbat dñs.
de. pñat. e. om. xxij. q. di. et fñt leonis pñ. dñm. ad regē francor. et e. dñm. xxij.
q. d. et fñt nicola. dñm. dñm. francor. dñm. aut in alijs bellis eadē mñs.
e. saluatur dñmō decedant sine morali. si aut in bello mñato. et cu illo solo mor-
tali decedant pñnt. de. p. di. v. fñs. ff. an p rebz et possessionibz eadē laci fello

Quo sup^{er} tertio primo tractatu p^{ri}ncipali de bello vniuersali cōsi. restat nūc quarto uidere de bello particulari quod fit ob tuclam sui. et in ipius tractatu sic pcedam. nam pmo demonstrabo quid sit. Et quot sint sp^{eci}ies eius. Et tertio quo ordine indicari sit. Quarta quib^{us} liceat. Quinco q^{uod} quib^{us} facere p^{oss}unt liceat. Sextimo quib^{us} liceat. Et Octauo que sit ipius finis. **Q**uid sit particulare bellum. R^{es}p^{on}ditur. Bellum. ob tuclā sui particulare indicari. Dico q^{uod} iuxta p^{ri}mu ai q^{uod} quid sit particulare est q^{uod} gentis exorta p^{er} diffidēcie humano ap^{er}itui. p^{er} p^{er}secutū et violentia particulare illatā p^{er}ueniens ad ipius cōfusiōne tendēcie. hoc p^{ro}bat^{ur} mentalit^{er} p^{er} textum. l. ut v^{er}ū. ff. de iust. et i^{ur}e. et l. qui sciam q^{uod} qui si alit^{er} ff. ad. l. adq^{ui}lit. et l. r. c. v^{er}ū. v^{er}ū. et l. i^{ur}e. s. si quis ff. de v^{er}ū. et v^{er}ū. ac. et c. olim. de resti. spo. Et dicit q^{uod} gentis. nam q^{uod} gentis p^{ro}uit^{ur} p^{ro}gnē ut p^{ro}uita est in diffinitōe bellig^{er}ialit^{er} sup^{er}ius. ut d^{icitur} p^{ri}mo tractatu t^{er} p^{ri}ncipali. p^{ri}mo dicit exorta p^{er} diffidēcie. et c. et illud p^{ro}bat^{ur} loco diffēctis. nam p^{er} hoc differt a bello vniuersali et alijs p^{ar}tibus belli. Tertio dicit ad ipius et c. hoc est a finali ipius belli. Et quot sint sp^{eci}ies particulare belli. R^{es}p^{on}ditur.

Quot sint species p[er]iculorum
 Preterea s[ic] aut[em] q[uo]d quot sint ip[s]e species dico, q[uo]d sunt due. n[on] quoddam iustu[m]. quoddam iustu[m]
 ut cora[m] d[omi]ni bellu[m] d[omi]niale. Bellu[m] aut[em] p[er]iculare iustu[m] est duplex. nam quoddam s[ic]
 p[er] tutelam uer[bi] corpus ul[tra] adherentiu[m] siue q[uo]ngentiu[m] uer[bi] corpus. & hoc in p[re]sentia tractatu[m]
 disputam. aliud s[ic] p[er] tutelam corp[or]is iusticia[m] ul[tra] p[ar]te[m] ut damus in b[er]n[u]lfrico, que ap[er]lat[ur]
 corpus et singuli ap[er]llant[ur] membra et p[ar]tes, s[ic] q[uo]d aliq[uo]d d[omi]ni. s[ic] p[er] ad municip[ia]. l. q[uo]d maior
 s[ic] de iure u[er]o. l. s[ic] si hac q[uo]d qui m[an]u[m] u[er]o, & ext[er]a p[re]la. l. si dilecta, et ibi no[n]. Si igit[ur] d[omi]n[u]m
 uer[bi]tis, p[er] defensionem a iure sui ad ext[er]os opp[re]ssu[m] deficiente iusticia[m] iudicis opp[re]ssione bellu[m] indicat[ur]
 hoc ap[er]llant[ur] p[er]iculare p[er] tutelam iusticia[m] corp[or]is, siue p[ar]tes, et hoc ap[er]llant[ur] p[er]icul[um] rep[re]salia
 de qua m[an]et ut no[n] fiant pigno[r]e. p[er] totu[m]. de iure. c. uno p[er] totu[m]. l. d. Et de hoc bello dicit[ur] q[uo]d
 tractatu[m] p[ri]us. Bellu[m] aut[em] iustu[m] p[er]iculare, ob tutelam uer[bi] corpus indicat[ur]. est q[ui]nto exor-
 ta p[er] difforme h[um]ano appetitu[m] p[re]sentiu[m]. p[er]ueniens ex illata uolentia p[er]iculans, ap[er]uata,
 ul[tra] publica p[er]sona ex off[ic]io iniuste inferento, ad ip[s]e excusatione[m] tendens, cum mod[er]amine mal-
 p[ar]te tueles, ut hoc plantur. in l. i. c. in vi. cum i[n]i[n]o. In iustu[m] aut[em] est ubi p[re]cedit ul[tra] aliquod
 p[re]ced[ens] deficiat. ut in p[re]cedenti declarabit[ur].

3. Zila ob tutekta puya pue pua
nile.

Ca fapm gmoit a pue nali.

¶ Quibz p[ro]p[ri]e liceat hoc p[ri]vilegium bellum indicare.

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A. G. pr.

¶ Secundo quero quid de clerico celebrante, an a sit licitū dimisso officio si inuadatur, se defen-
dere, et cedere, et inquit si sic se defendens cederet licitū sit quoniam officio celebrare pro
pmo apper qd nō debet dūtere, ab officio ymo ipm teneat exequi donec possit uideretur, capet
vii. q. i. illud. et c. nichil. preterea tpealia sunt postponenda, spualibz. xii. q. i. papimus de peni.
et re. cū infirmitas, c. d. epi. et cle. psumamus. In qru pbat rex. nam p impedimentū
corporale supueniens, officiu mchoati dimittit inceptū, et pca pudent iura, ne solus sit
sacerdos in ecclesia ubi subest facultas honore tpealium. pbat rex. in c. statū allegans. di. q. i.
illud. et c. nichil. ut unus suppleat qtinuando ubi alter dimisit. d. q. d. y. c. ult. nisi oro
misse, sit cepta et nō qletū, quia tūc alter, remaneat tenet, cū illa nō recipiat dimissione
ut in baptismo et ordine, ut. xxi. di. quorūdam et ibi nō. glo. et in c. nichil. etiā nō. glo.
q. si aliquis inuadat celebrantem ut ipm accidit hic euenit impedimentū celebranti ymo,
pualū mortis ut claret. ergo licitū ptermittit, et p qsequens, se depiculo sibi auctenti
pior expedire, etiā accedendo. Ad allegata in qru fiale qd videretur, nam h pualia pnt
ponenda tpealibz in qre in celebratio spualū hoc cū nō est pponenda, cū hoc cū p dēp-
nam inreceptibile lex hoc pmitat quod nō qtingit in spuali ppositio quia pualū respurmet
pōt ut eundem pualo excluso, cōd pō sine argumētis dico, qd pualū accidit se dēfendēdo
q pōtē rescripto officio celebrare, dum mō affuerit illa dē quibz loquit, clem. si puiosus, nā
nullum peccatū cum hoc fecit. leges autē. cuius autē nemo peccat, ut in cū. qui peccat. xxii.
q. ii. vii. nullam irregularitatem facit, ut in pcedē. clem. si puiosus, ergo nullum uidet
subesse impedimentum, quin possit celebrare, ut pbat clem. statū inducta, y

An baptizanti ordinanti a firmanti iungenda et singula sacramenta q̄ ferentia inuasio
hacti sit collatorem illoz sacramentoz postponere inchoatam. *¶* Quarto sic posset qui
argui et solui de baptizante ordinante iungente etia in singulis sacramentis an sit hacti
illoz collatorem postponere etia si inchoauit p̄ auctelan sin. et in oib. die ut s̄.
An p̄elligenda sit mors inuasi sacerdotis cu pueru in mortis articulo p̄a baptizat
an vita eterna ipius pueri ne debeat sine baptismo. *¶* Quinto quere sacerdos bap
tizans pueru qui est in mortis piculo et in articulo inuasio sacerdotis ut accidat quid p̄elligat
de uice an p̄ficere collatorem sacramenta ne debeat puer sine baptismo et ip̄e sacerdos
accidat ut eā p̄elligendum mortē p̄pria euadere et p̄mittere pueru mori sine bap
tismo. Sic forma q̄am de sacerdote deferente corpus xpi infirmo in extremis laborati
pro pmo apper q̄ sacerdos potius debeat se p̄mittere accidi q̄ pueru sine baptismo mori
nā si puer moritur sine baptismo moritur eternale ut pbat Aug. ad petru dyac. de
q̄ se. di. iij. firmissime et c. regenerante eadem di. et c. nulla. e. di. pbat ap̄las ad
ep̄s. iij. c. p̄ d̄ictu vniuers. omnes in d̄apnatoe. sic originale peccatu cui effusio nō est ex
stinctus p̄ sacm̄ baptismatis inducit d̄apnatoem etiam si sacerdos solum t̄p̄aliter
morit̄ si al̄ necessarius ad salute etiam indubius si mors t̄p̄alis postponenda est sp̄uali
sic arguit Aug. xxiij. q. iij. displicet et c. ip̄a pietas ergo potius d̄ sacerdos colligere
mori ut puer in et̄na nō peat preterea inter duo mala minus malū est colligendum
et minus malū xij. di. necu t̄p̄alioz et similib. at minus malū est mors t̄p̄alis
q̄ eterna ut cā ip̄a pietas et c. displicet. xxiij. q. iij. et mors pueri est eterna ut c.
firmissime et c. nulla et c. regenerante de q̄ se. di. iij. mors aut sacerdotis est t̄p̄alis
ergo p̄elligenda preterea papius actus caritatis est q̄ quis p̄p̄m diligat sicut se
ip̄m de pen. di. ij. p̄p̄mos et c. p̄m̄ et c. caritas q̄ ut m̄ch. uē. At hic sacerdos si
p̄eligat salute eterna puero vite sue t̄p̄ali nō diligit ip̄m sicut se ip̄m et sic caritate
carebit quod p̄batur nam vita et̄na sine q̄paratōe p̄cedit uitā t̄p̄alem ergo p̄elligēdo
uitā t̄p̄alem sibi vite et̄ne p̄p̄m multo magis se diligit q̄ p̄p̄m et sic remanet
caritate vacuus preterea illud p̄elligendum est ad cui p̄ductōem pauiores mala secūdu
ad mortē sacerdotis minus malū sequit̄ q̄ ad mortē pueri sine baptismo ergo p̄eli
genda mors sacerdotis p̄batur maior nam hoc est regula in moralib. q̄ plura mala
petens parib. deteriora sunt pauiorib. et magis fugienda p̄batur in cā. necu p̄m di.
p̄batur minor nā si colligatur sacerdotis vita secūnt̄ duo mala s̄ mors eterna pueri ut
sup̄ adductū est et neglectus cūe atq̄ quod mortale ut in c. si sit ars de eta et quali
et aut p̄eligatur mors t̄p̄alis sacerdotis nō sequatur nisi illud malū s̄ t̄p̄alis mors q̄
etia attendit qualitate actus in se sine q̄paratōe minus malū est mortē p̄pria ergo m̄fere
ut s̄. *¶* In gen̄ uidetur t̄p̄ qui locutū ḡnalit̄ p̄cedēdo cūlitz facultate se defendendi in
cū necessitate sufficit et̄m si furiosus sep̄us alacrit̄ Confirmatur p̄ura que dicunt
caritate in ap̄pe ase ip̄o ut l̄ p̄p̄e et c. de p̄nt et aqua et c. p̄p̄e de uir uir (so. p̄m̄
donna hūl q̄o et solutio eiusdem est examinare cūm indubitatōis nā sunt cūm indubitan
in thematice p̄posito ecce si ponamus q̄ puer p̄allū etia lap̄ū ul̄ mulierē baptizari posset
q̄o q̄ sacerdos dūderet a sacramenta collatōe non eēt dubiū q̄ sacerdos deberet p̄eligere salute
suam ubi etia verisimilit̄ puer posset viuere usq̄ ad exp̄ditōem piculi et hoc cūsimilit̄
q̄staret nō h̄cēm q̄am dubia quo minus sacerdos h̄cēt p̄eligere salute suā (nec v̄es m̄
dueto q̄cludunt q̄ta hunc cūm) Exponemus q̄am in adulto nō aut in infante qui adult̄
q̄ nō suscipiat p̄ baptis baptismū flūis in decedet siue h̄at fidē cū baptismate flām̄
adhuc nō h̄cēm q̄am dubiam p̄mo dicere ut s̄ p̄elligendam salute sacerdotis q̄ questio
p̄cedit in puero de quo q̄stut q̄ moriet̄ sine baptismate si sacerdos dūderet. Et q̄o p̄cedit in
dubio ubi uidet̄ de hoc p̄babili dubitaretur In pmo aut̄ ubi d̄ h̄c q̄staret credere p̄eligēdi
mortē sacerdotis t̄p̄alem p̄ura s̄ inducit et fundit̄ p̄ c. que h̄entur di. q. i. g. h̄uē etia
x̄ cū uō sp̄alit̄ ager et quod ibi nō q̄d nam ubi solus placus querit̄ nec eccl̄a pot̄ co
tuen eo fugiente exponere d̄ se mortē p̄p̄a ut ibi hoc maxime p̄cedunt in p̄p̄lo sacer
dote et parochiano et mouent me v̄es sup̄ ad h̄c inducit ubi aut̄ foret dubiū p̄babile
de morte ul̄ de vita pueri usq̄ ad exp̄ditōem piculi et q̄staret de morte p̄st̄i nisi dūderet
adhuc credere p̄cedēdi mortē sacerdotis cū in mortis nō c̄ens locus sit q̄etnū
ut l̄ q̄m̄us s̄ illud p̄p̄e x̄ ob. ubi aut̄ p̄babile dubiū foret h̄c m̄d̄ credere ut s̄ p̄o m̄d̄o
h̄c in sacramento baptismatis In corpe aut̄ xpi siue eēt gl̄o que est in c. quod m̄t̄ de pen
et remi que dicit d̄ictū nō eēt sacramentū n̄citat̄ tūc q̄o nō eēt multū dubia s̄ illa
gl̄o nō est uera p̄mo alia gl̄o nō gen̄ in c. veniens de trasac. in p̄ma gl̄o et illa est uā
ut nō de sacra nō p̄erant sup̄ ip̄o p̄batur ut̄ t̄p̄ in c. omis de pen. et remi. Tam̄ adhuc h̄c

In p̄m̄

So. q̄o

supposito p vero q sit sacramentum accitatis adhuc dicere peligendam vita ipraltem sacer
dotis, quocir ex hoc q etia si quis decedat sine corpore xpi ubi p eu no pnt et no gremple
no moritur, eternalit siq sicut in baptismo, idcirco in hac cau no cluderent rades s
inducto, Idem dicere in sacramento penitentie, quia eadem sine oris qessione decedere,
ubi p eu no pnt sola qritudo virtutis saluat eum ut no d pom. d. i. in firma et i. s. hys
ita, Idem p oia dicere in sacro dicitis.

In monacho licet se defendere sine licentia abbatis sui. **S**exto quero nunquid mona
cho licet se se defendere sine licentia prelati sui, q no. nam monachus na uidet, nec di
bruce debz acm delictum nisi de licentia prelati sui, q sine ipius licentia cuet uelle, nolle
xii. q. i. notd. et. e. no dicitur de elect. quodam et e. si religiosus li. d. et elem. religiosus
de pait. at isto actus defense puenit amero libertatis arbitrio, q pot ead nolle ergo no
potuit sine licentia prelati, pnterea monachus est mortuus mundo, x. d. q. i. monachi et
e. placuit, ergo sibi no ppetit actus tendentes ad defense dicit, q monacho interditi
sunt actus etia in bonitendentes, sine licentia prelati sui ut sit ducere, peregrinari et sim
les actus p iura pnti allegata, q qm uidetur na defense corpis sui puenit ex iustitiam
nali nec vglatur, lege diuina ut alia, nec altera, q licet monacho, cu psum ad na
les actus no sit mortuus, s solum qus ad auitus actus, ut quibz sui inducitur, eo. cecid.
aced q si monachus sine pualo more, possit se defendere, cu licentia prelati sui ipam petere
debet. ha pstant iura, inducunt ad pma ptem. Si aut no possit licentia prelati petere, q no
est pntis et pualit est in mora, tuc potest sine licentia prelati, quocir ex hoc, q iste act
est iure nali inducitur, qle prelati no poset sine ea totalit interdicare pmo forte nec p.
cu na ha indupret, nec in hys subditis m prelati sui, sicut pntit et sine ea interdiceret
abn et pot, quocir me glo. que e m. e. no dicitur, p. q. i. nam querit ibi glo. an licet mo
nacho facere elemosina paupr fame mouenti, nisi subueniatur, ei sine licentia prelati
et tenet q sic, na ha cau necessitate tuc, si pndere pot alterius, dicit, p actu al mhibiti s
quarto magis, pndere potuit dicit sui p actu sibi anilibz mstati, no video qe. pmo dicit
dicit Raymondus in pma, de negt. singularibz, scilicet. s. p. qe circa hoc. q si abas mfy
beret no facere d, q tuc no hoberet hñ si deo, dñ. d. que iure.

In sub licet se defendere sine iussu dñi sui. **S**exto qd nunquid licet suo sic se defen
dere sine iussu dñi sui videt q no. nam actus quos pnullis hñtur. ut l. pms e. d. rei. ven.
et l. vi. c. de. ff. de iudi. et l. si quis mch boni. s. iussu. ff. de adqu. po. ff. d. In qm m
nam hodie more pnt no est in potate dñi, ut l. i. ff. de hys qui sunt sui ul ali. m. con
firmatur, nam actus nales no pot totalit dñs interdicare suo, p quop interdictio dñs pms
peat, ut l. s. p. dñ. ali. eo. ut s. p. dñ. dñ. est de monaco.

In baptismo qui p statuta ciuitatū su qñq impune occidi possunt licet se defendere. **I**stha.
Octauo qd nunquid illis quos licet est offendere, addere, impune ut pote baptismo ali
quibus aliqñ disponit leges municipales, q impune offendi possint, licet sit se defendere, dñ.
q no. nam si apuato iuste inferat violentia no licet se defendere, ut l. iij. ff. ad. l. ad quib
at hic iuste inferatur, q lege auctorizante, ut l. iuste de adqu. pos. Confirmat si violentia
inferatur, a publica psona, no licet se defendere, ff. de iur. l. i. muniay. s. i. ff. de rei. ven. l.
qui restitueret, at hic iste gerit iust pphibet q. nam lex facit ipm ministru pmitenda puato,
ipm pmitte, et hoc p. lex f. dare iurisdictionem puato, ut l. et qua. ff. de iur. d. iudi. et. e. po.
no prelati. dñ. suas, ubi notat, q. inferat huc no licet se defendere, In qm m q hic est
puatus ymo et si foret publica psona, apper iuste inferat violentia cu inferat iuste ordie
no puato, et sic iusticia, ordine atento, ut l. prelati. d. e. d. sen. et cap. qm. d. d. prelati. eo.
puto ponderanda uerba l. c. na aliqñ. lex pmitit aliquid q nullo iure pphibetur, ut p. p. p.
q. i. hac rō. Aliqñ. lex pmitit aliquid q qstitutes humanas, ut qhere olim in quinto gradu
ut. x. d. q. iij. quodam. Tercio mo lex pmitit tolerando, no quia, faciat actu all illicitu
licet si actu illicitu maneat illicitu no pmitit ut dicit rex. m. e. deniq. m. d. na come
denetis carnes in media nocte dñice carnis plimij no puniuntur, et dicit rex. pmitit dñst
no puniunt p multitudinē et scandalu. sic al pmitit adulteriu ut dicitur, hominē dñu p. p. p.
q. i. si quis uerue, et in adulteriu no sit licitum p. l. sic pmitente, si actu maneat illicito,
pena remittit, sic in pposito si lex pmitit tolerando, et pena remittendo actu maneat illicito
p odium baptisti tuc cederem baptisto, licet se defendere, nec huc extitit qelidit s
allegata, Si aut lex pmitit possum facere actu de illicito licitū. tuc secus, et ista ma
pmissione notatur, p glo. m. d. ois aut lex. **C**ontra qd licet hoc pualare bellu iudic.

Istha quatuor videt q quos hoc pualare bellu opertat est uidendum. Et circa hoc qe
de pluribz **I**n licet q supriorem sui. **E**t pmo qe an licet p aliam hac bellu

18. 2. 7. cap. 2. q. 4. uij.

An licet monacho facere elemosinas sine licentia abbatis.

Dist. mod. pmissio. add. 7. fol. 126.

pmine nō licet se defendere. Et aut ultra et q̄ mō, dicitur tūc p̄cis ut ē plene tuatū est. Ex hys
breuit̄ inferre q̄ quos. Ex regula supradicta possent questionē m̄m̄to solui.

Pro quibz p̄sonis licet hoc p̄uallare bellum indere. Et
Ira sexum est uidere. Videt̄ p̄ quibz licet et p̄mo circa p̄sonas p̄ quibz licetū sit. et pono
indubitan̄ q̄ p̄fensa sui ip̄is. hoc p̄bat. rep. in l. de vim. ff. de iust. et iur. et l. i. q̄
vim. ff. de vi. et vi. ar. et l. iij. ad l. ad quibz et l. p̄am q̄. qui cū alie. c. ti. clare in elem. i.
de homic. et alijs nō infra queritur.

An liceat patri p̄ filio. Et p̄mo quere an liceat patri p̄ filio. Expediendū patet dubia
sine argumentatōibz dicendum q̄ sic nā pater filiu ut se ip̄m diligit. ut l. isti quidem. ff.
quod me. ca. nā p̄ hoc p̄petuatur in eis. ff. de v. si. l. liberos in fi. etia q̄ una p̄sona cōf̄et
ut c. de imp. et al. sub. Rulf. in aut̄ de iur. iur. amo. p̄. in p̄. in aut̄. m̄st. de mutal. sup.
et eiq̄ hoc clare q̄m cō. f. filius p̄ p̄e.

An liceat marito p̄ uxore. Vp. Et q̄ nūquid hoc liceat marito p̄ uxore. Clare est q̄
sic. nam iurata uxori r̄rogata. est r̄rogata. marito et iurata actō sibi q̄petit p̄mo et s̄o
p̄. ut l. item ap. et si sponsum. ff. de iur. et marito licetū est occidere dilectū repleū adultē
r̄ntem cū uxore. ut l. marito. et l. capite quito. ff. ad l. iul. de adult. et l. graue. c.
c. ti. p̄mo et subulante moniti p̄ura. aut̄ nec madit in eā si quis suadente. vbi q̄
in. ob hoc micene manus violentas. in clerici. ut c. p̄mo. g. nec ille. de sen. exo.

An liceat p̄f̄e uxore et alijs quicūq̄ p̄sonis. Et Tercio q̄ quid p̄f̄e et sorore
et alijs quicūq̄ p̄sonis. et nō quicūq̄. Et glo. in l. de vim. ff. de iust. et iur. dicit ponderatū
affectum. allegat l. isti quidem. ff. q̄ me. ca. et l. cū p̄mo ff. man. alij nolūt dicere q̄ p̄oibz
quicūq̄ licet. p̄bant sic. nam si quis iurata um quicūq̄ omibz iurari. ut l. nō q̄petit alijs
iuratas actō. ut l. lex cornelia in p̄. ff. de iurys. et confirmat. nā p̄fensa v̄p̄ licet
v̄m vi repellere. ut l. v. c. vi. di. et l. in p̄. c. si g. ff. de vi. et vi. ar. et licetū est dolentia
v̄m vi repellere. p̄fensa v̄p̄ amicos. et quicūq̄ quocūq̄. Et q̄ licetū est amicos et quicūq̄
tos iurare. et sic q̄cludunt p̄ quicūq̄ indistincto. licet. hoc opo q̄firmari. ut nā h̄o h̄o
offm̄ debet. ut l. cū p̄mo. ff. de p̄mo. c. p̄. Ego ex illo offm̄o iurare licet. Confirmat p̄
l. additos c. de apol. melius. p̄ l. nō tantū. ff. de apol. vbi etia ep̄neus p̄ p̄p̄nato in cri
minali appellat etia nō nolente. p̄bat. p̄ l. in c. de li. cū. Et Ja. bu. in l. ut v̄m. distinguit
in hunc modum. Aut ego ut ego sine mandato iurata uolo defendere iurata et posum
p̄viam iure nō aut̄ f̄i et sic intelligunt. l. p̄am allegat. additos. nō t̄m. et l. in c. de li.
ca. Aut uolo hoc facere. nō ut ego. s̄ mandante iurato. et tūc potero etia p̄ v̄ia facti
ut l. in p̄. c. si g. ff. de vi. et vi. ar. alij distinguit. Aut illi erat in comitatu iurata possi
et possent tūc p̄pulsare iurata p̄sonē. eius illata. ar. l. ite apud labeonē. q̄ si quis v̄ragine
ff. de iur. al. nō. ut tenet glo. indistincte in l. v. c. vi. vbi Cymus. h̄ac opy vocat̄
impt̄ q̄e alij. ut Ja. de ra. dicit indistincte q̄ licet nō. nam negat̄ mea possunt iurare
p̄ allum. ut l. i. ff. de nos. ge. multo fortius et p̄sona iurare potit cum p̄sona rebz p̄ferat̄
ut l. sanamus c. de sa. san. ecclē. allegat p̄am. l. graue. c. de adult. et fidias ibi sunt
filius soluit p̄ l. liber homo. ff. ad l. ad quibz. Cno. ob l. cū fundum. ff. de vi. et vi. ar. nā ibi
ex m̄uallo uoluit quod etia nō haussert p̄ se. nō. ob l. p̄m cū. l. ut v̄m. ff. de iust. et iur.
ubi dicit ob tutelam sui corpis. Et p̄ l. si p̄mo. ff. de p̄mo. c. p̄. ex p̄t̄am hanc opy. ut sequi ex.
in l. v. c. vi. di. in q̄e asipit. In hys tot et tantis cedere ponderandum q̄ mistm̄ forma
in q̄am de quicūq̄ et c̄neis quod queri pot an liceat quicūq̄ ul ep̄neo. alterius violentiā
vi repellere. sicut liceret p̄p̄m ad euitandam penā irregularitatis. si sit clericus ul layc
h̄o cū accidens. ul mutalans. pot etia queri de utrisq̄. s̄ an licetū sit ut nō madat alia
penā. legis ul canonis. Et querat̄ de p̄mo. dico cūm et in elem. si p̄uofus de homie q̄ p̄
tum ouadat euitat penā irregularitatis. si hoc faciat se ip̄m t̄m mō defendendū. nō aut̄
allum etia p̄em ul filiu. hoc p̄bat rep. dicens idem c̄semus de illo qui morte alie. iurac
nō ualens. suū accidit ul mutalant iuratore. loquitur ergo de suo nō aut̄ de iuratore
alterius. hoc ibi etia nō. glo. sup̄ illo sūm. hoc ergo cū reputo planū ut ibi. Et aut̄ q̄m
an liceat ut v̄tent̄ alie pene legales. legales ul canonice et tūc distinguit. Aut loquitur
de pena excoicatiois s̄ h̄o cū p̄tial̄ clericū violentiā alterius repellendū. Et tūc dicit
cū iurac. q̄ si defendat p̄t̄e mat̄e uxore filiu ul filiam euadit suam excoicatiois.
allegat ip̄e. l. isti quidem. ff. q̄ me. ca. et l. i. c. si v̄. ff. ad fil. et c. v̄o differēte int̄ hunc
caum et p̄cedente. nā irregularitatis q̄trahunt. etia sine dolo. ut est videre in iudice iuste
candi mandante. l. i. di. qui in aliquo. s̄ in excoicatiois p̄ illum canonice lata. requirit dyalo
h̄o insignitio. ut c. si quis suadente. xliij. q̄ iij. In ep̄neis aut̄ nō euadit penā illi canonice

vid. a. 7. fo. 119. v. viij. q̄.

✦

¶ An eo qd defuncti qui tenentur violentia a gallis pponere. Et credo hoc qd a pluribus. Et pmo de Bassallo qd et nō est dubitū qd tenetur. An Bassallus tenetur mutare dñm suum. Et pmo de Bassallo qd et nō est dubitū qd tenetur. mutare dñm. Ad pde secundū ut in dñs seu qd fuit pa. cā. dñs. ami. C. pma aut cā. s. ut qui dñm et s. fouen.

ter. m. l. i. q. hoc aut p. ad. pl. et. k. ult. e. d. n.
An miles teneat defendere propriū belli. ¶ Tercio querit de proprio belli. et q. teneat iuvare
bellum belli sicut al capite punitur est ter. m. l. omne dicitur. p. de re mil. et. l. m. g. f. p. c.

An vassallus videns dñm inuassim ex vna pte / patet ex alia 7c. Quareto qđ dñs vassalus
videt dñm inuassim ex vna pte / patet ex alia vtracq; pñtū est in more pñculo nisi in

under dñm inuafim ex una pte. patre ex alia. Vtq; pater etc in motu pñat. Infi in
uent. nec inuare pot infi alter. que inuabit pñem. an dñm. Glo. que est. xxi. q. v. de forma.
Dicit ex bassalus du tñr inuare dñm q filii pñem. Inducat q filius tñr pñi uere nature ff.

[illegible]

forer deca qđ qđ tenetur unaxe dñm cui plus asseruimus In hac qđ dicitur qđm et moueo
ex hoc nā plus tenet^r pater ex vinculo nāli ex quo ab eo pgenitus est. tenet^r et vinculo ciuili
et si quis intato pater/ dñs aut tñs ex vinculo ciuili tm ut pcedo. s. de forma/ xpx. q. d.

qz sub eius potate patet / Dñs aut tñs dñs vinculo cuius tm. ut pñcto. a. & forma / x. p. q. d. /
Ez dñs vincula dñcūt unū in aut & qñ. et dñs. scilicet in pñ. Confirmat / tñs pñcto. o. dñs
tñs. nā tñs est vinculu mññū vinculo dñco / ergo pñto pñt unare tñs / ut. l. pñcto. et p.

quod nā pū est vinculu pātiū vīculo dīco/ergo pmo ipm unūce tūc/ ut i. pōtior. et i.
qui bāteū. ff. qui. p. i. p. hā. Confirmatur/ Juramentū p pū dīo intelligitur saluo vī-
tulo pcedenti/ nām ius aliter qūtū nō tollit p pām obligatōem/ ut dē. l. qui bāteū. et. l. pō

cilio padenti nam uis alteri datum no tollit p piam obsequium ut car. i. qui carum et. i. po
tior/ Confirmatur p e. petro de uis. uis. nam uiuendo dno de ipm uiuendo no intelligit
uiuasse sic quo minus se ipm vns uiuet q dnm q fecit pma caritas ut l. p. p. c. d. p. i. f.

invasse sic quo minus se ipm pns uinet q dnm q nec pma curatus ut r ples. & d sunt.
ex patre; est eadem psona cu filio; uero fide; ut lult cu qcor. & d impu. et al sub. ergo.
¶ In d. xxi. uidens epm sui inuasiu ex una pte/patre ex alia. dicensque pater; et E.

¶ In clericis videtur ep̄m suū inuasiū ep̄m vna pte/patet ex alia/ utroque pariter/ et E.
¶ Quanto q̄ pone clericus uidet ep̄m suū inuasiū ep̄m vna pte/patet ex alia/ utroq. parit.
et in mortisiculo/ nisi iuuentur/ nec unare pot. nisi alteri/ quē unabit/ ep̄m/ ut patet car.

est in mortis periculo / nisi uiuentur nec uiuere pot nisi alterz que uiuabit eptm / ut patere car-
nalem. Osney. in 6. graue de epecs pla. arguit exilio fratres quod ibi ponit q plus asfringit
uiteris sonalibz q carnalibz. p hoc facit 6. 11. de cessat. Et illa opinio cet uera solum foret qd

patribz spualibz q̄ curauit. p̄ hoc facit. c. 11. de consue. Et ulla opinio est uera. Ioum p̄ uer q̄
Et in hac q̄e excedit ut ē p̄oria q̄e. Induco. c. 11. de postuli. nā ibi dicit t̄p. p̄ postulatū. q̄ certam
et nō p̄ fine. uerū d̄nificū. ex q̄o ad uerū p̄ fine posset. Induco. c. p̄ uerū de m̄. uir. inducendū ut

et no p sine; pot dñficiu/ ergo agens p sine posset; induco. e. ponit a m. uiz. monentia n.
e p qd motu et faciant motua e prima qd inducta; et qd. in cas pictatum. xxx. q. iiij.

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15 h^o recte p^or.

ff. vi. po.

sup ubi multo magis tenet q^m in epibito epualu magis tenem^r patri carnali q^m spiritali in ep^o
 dicit aut veniente c^m idem no. glo. xxx. di. c. v. suaant que notatur. lxxxv. di. no. fane et
 c. quiescamus. xli. di.

¶ Porro quibz rebus licet sit bellum indicere. **¶** Quidam d^osum est q^d hoc mendoz an et p^o
 quibus p^osonis licet hac bellum indicere (tunc aut subsequet q^d an et p^o rebus defendendis
 licet sit ead^e hac bellu indicere. Et archa^o q^d de pluribz.

¶ An licet p^o rebus iuste possessis. **¶** Et p^omo de rebz iuste possessis, et de hys no est dubiu
 tex. est. in. l. i. c. vi. di. p^olatu. m. l. i. m. s. si quis aut. x. cum igne. al. est. ff. de vi. l. vi.
 ar. et c. olim de resti. spo.

¶ An p^o rebus licet iniuste possessis. **¶** Et q^d an p^o rebus iniuste possessis hac licet (glo. m. l. i.
 c. vi. di. hac tractat. Et ut q^d no agrio sensu. illius. tex. q^d est ualidum. ar. ut. l. i. s. hui^o
 rei. ff. de offi. ei. cui man. e. ur. et c. cu. vru. de quere. g^ou. et c. hospitoli. xxx. di.
 In q^ou. in p^o tex. l. i. s. qui di. ame. ff. de vi. et vi. ar. et l. cu. fundum. c. ti. et l. si ai. except^o
 p^o pedus. ff. q^d me. ca. So. p^o hac legu. appena q^ouere. glo. in. da. l. i. aut plures so. p^o.
 q^d ibi subaudiat maxime. et tuc cessat q^ou. q^d ead^e p^o ditiosa possit licet. So. soluit q^d
 iungat p^onapu. l. cu. fine. ut dicitur. recte licet. Et tuc obstat quod dicit lex in medio
 sine vicio. ergo agrio secus ubi cu. vicio. Tercio q^d iuste possident semper licet p^o ditiose
 possidenti no licet semper. na p^ono in q^onta ueniat. no licet ditiose possideri sibi resti. so
 ut. l. i. m. s. cu. ientur. ff. de di. et vi. ar. Quarto exponend^o recte. v. no. di. no clam. no p^ouio.
 et hoc no placet glo. s. ja. de vi. sequit^o ea q^ou. ad eu. qui uult p^ouillare. Et si violentia
 inferatur ab eo. a quo ditiose possidet. licet in q^onta no aut ex metuallo. Si aut ab alio.
 ditiose possidet. tuc q^ou. licet. et hoc est quod dicit lex q^d adu. q^ou. ditiosa possessio.
 p^ouillare. ff. ut. pos. l. i. ff. de adu. pos. l. i. l. i. ff. p^ou. uen. l. l. i. l. i. corpus. s. q^ou. et tuc
 sententia ja. q^d clandestinu possessorem licet sit michi expellere. si ame. clam. possideat. q^d
 clandestina possessio est iniusta. ut ff. de adu. pos. l. i. cu. quis. p^o hac opp. facit. l. si p^ou.
 ff. p^o cu. eo. hanc opi. in sententia glo. ff. ut. pos. l. i. s. interdictu in medio magne glo. ibi
 nec in uolo et Et dy. ibi tenet q^ou. cu. nulla lege hoc recipitur. autu. q^d clandestinu possore
 licet michi expellere. p^o dicit lex vim di. repellere licet. s. qui clandestina ingreditur. no
 inferet vim cu. differat clandestina et violentia. ut l. clam. possidere s. qui ad nudinas. ff. de
 adu. pos. In p^ouio aut possessore p^ouillare posset opp. ja. p^ou. denegati restitutum nam
 ame. eni in spoliare dnm. ut no. in. l. i. di. a. de adu. pos. In hac op^omonu. variat^o credit
 rem. p^ou. so. glo. fore uera. qua ead^e sequit^o. p^o de bel. p^ou. in. da. l. i. cum in sic ampliand^o.
 tuc ego d^olene vim p^ouillare. iuste possido aut iuste. Si iuste aut solo in q^onta et cu
 moderamine inculpato tutele. et possum ut. da. l. i. et l. i. s. vim di. ff. de di. et vi. ar. aut ex
 metuallo et tuc no possum. ut l. i. m. s. si quis aut. x. ci. ientur. ff. de di. et vi. ar. So. aut. f. ai
 iuste possido. aut possido iuste ate. q^d que uolo vim p^ouillare. aut ab alio. Si ate. tunc
 aut vi. aut clam. aut p^ouio. Si in tunc aut statu uenit ut recipit. et no licet michi re
 sistere. et sic intelligitur. l. i. agrio sensu. C. in. vi. et i. et i. est uerus. et rectus intellectus.
 illius. s. ibi ponderatur. vna cu. allegatis m^ou. Si aut veme. ex metuallo tuc licet resistere.
 quia nec tibi ex metuallo licet recipere. ante p^ou. ymo iadere. pena. l. si quis in p^ou. a
 vi. in. et intelligo ex metuallo. ut no. glo. ff. de di. et vi. ar. l. i. m. s. cu. ientur. Si aut no possi
 deo di. s. p^ouio. tuc p^ou. denegati restitutum licet est tibi in q^onta vim di. repellere. nec
 licet michi resistere. na denegando uidet^o spoliare. Et l. vna. c. de adu. pos. et tuc p^ou.
 q^d vim di. repellere licet. an aut denegati no p^ouillaret. licet possem reuocare p^ou. ut l. cu. p^ou.
 ff. de p^ou. Si aut possido clandestine ate. tuc quidquid dicit glo. in. l. i. s. interdictu. ff.
 in. pos. et ja. de ra. m. l. i. c. unde in. cred. cu. dy. no q^d no sit licet tibi me expellere. s. licet tibi
 ingredi et sit no admiso. ex tuc sit violentia. ut l. clam. q^d qui ad nudinas. ff. de adu. pos.
 et tuc p^ouillaret. Si aut no possido ditiose ate. s. a tercio tuc licet michi q^ou. q^ou. uolente
 ead^e. hoc d^ou. saluo iudicio tot et tanto sup^o hac dubio disputam^ou. subintendo da. quoru. q^ou.
 coeuntibz. uenit^o p^ouillare.

¶ An et si licet res defendere. defendens ead^e cum moderamine inculpato tutele faciat ul
 nullu. euitet pena irregularitatis. **¶** Et d^ou. q^d numquid vim vi repellendo. exerceo
 suas p^ouillat. vim repellente addere. ul. nullare. vim inferente euitet pena irregulari
 tatis. Et pono ubi hoc faciat cu. moderamine inculpato tutele. quia al. no p^ouillaret q^d et uidetur
 q^d euitet. na p^ouillat p^ouillat. euitet pena alia. ut in ead^e si furio sus de homi. ergo p^ouillat
 res. p^ouillat. q^ou. na mia p^ouillat. vim vi repellere p^ouillat. p^ouillat. q^ou. q^ou.

casu licet. ut l. i. c. vii. d. et l. i. c. vii. d. ff. de vi. et vi. ar. et l. sciam q. qui cu alit. ff. ad l. ad
 quiliam. In q. i. suat da clem. p. i. v. i. s. u. s. d. h. o. m. i. a. n. a. m. i. b. i. t. e. p. s. i. m. p. l. i. c. o. q. u. i. t. u. r. s. t. r. i. c. t. o. d. e.
 occasionis ul mulatior casus. s. u. i. et hanc credi uera. et moueor. ex hoc na irregulari
 ritatem qualiter quis accidendo ul mulando sine dolo. ut p. i. i. i. i. i. i. d. i. q. u. i. i. n. a. l. i. q. u. o. e. t.
 cui accidendo. ut. n. o. l. d. d. h. u. s. et c. sicut dignu de homia. et c. sicut ne cle. ul. mo. et
 c. in archiepiscopatu de rap. Quilibet igitur accidens qualiterumq. irregularis effiat. nisi i. c. a. b.
 exceptio nunt. Cum igitur ex apia. i. a. u. s. d. e. n. s. e. i. n. t. e. l. l. i. g. e. t. u. r. i. l. l. e. c. a. u. s. s. t. r. i. c. t. e. e. t. m. o. d. i. f. i.
 cato. ut ius exoptit. am sit ius exorditine. et sic stricte intelligendum. ut. regula que aut
 de re. i. u. e. l. i. d.

In p. i. u. s. s. u. e. d. e. f. e. n. d. e. n. d. i. s. q. d. e. l. e. r. i. c. u. m. e. x. c. o. m. u. n. i. c. a. t. i. o. n. e. m. m. a. d. a. t. m. a. n. u. s. i. n. f. i. a. c. i. e. n. d. o. E. u. b. r. i. a. s. a.
 Quare q. an p. i. u. s. s. u. e. d. e. n. d. i. s. d. i. m. b. i. r. e. p. e. l. l. e. n. d. o. q. d. e. l. e. r. i. c. u. m. i. n. a. d. a. t. e. x. c. o. m. u. n. i. c. a. t. i. o. n. e. m. m. a. n. u. s. i. n. f. i. a. c. i. e. n. d. o.
 d. i. p. e. r. q. s. i. c. p. c. a. n. s. i. q. u. i. s. s. u. a. d. e. n. t. e. x. b. i. q. m. et c. n. u. p. c. i. i. a. n. o. t. u. s. d. e. s. e. n. e. x. p. o. C. o. n. f. i. r. m. a. t.
 nam m. a. d. i. t. p. e. n. a. i. r. e. g. u. l. a. r. i. t. a. t. i. s. u. t. e. u. p. p. r. i. a. q. u. e. e. r. g. o. e. t. h. a. n. c. a. i. a. m. b. e. s. i. n. t. p. e. n. e. s. p. u. a. l. e. s.
 et f. a. l. i. u. s. q. u. i. s. m. a. d. a. t. e. x. c. o. m. u. n. i. c. a. t. i. o. n. e. m. q. i. r. e. g. u. l. a. r. i. t. a. t. e. u. t. c. l. a. r. e. t. s. p. o. l. i. t. i. o. m. a. c. t. i. n. e. o. l. i. m. d. e.
 r. e. s. t. i. s. p. o. l. i. a. t. o. r. i. t. e. t. q. n. o. m. a. d. a. t. e. x. c. o. m. u. n. i. c. a. t. i. o. n. e. m. v. i. m. b. i. r. e. p. e. l. l. e. n. d. o. s. i. a. l. m. i. s. m. a. n. u. s. i. n. f. i. a. c. i. e. n. d. o.
 n. o. p. o. s. s. i. t. v. i. m. b. i. r. e. p. e. l. l. e. r. e. e. t. h. o. c. f. a. c. i. a. t. c. u. m. m. o. d. e. r. a. m. i. n. e. m. a. u. l. p. a. t. e. t. u. t. e. l. e. h. a. n. c. o. p. p. e. r. e. d. d. u. e. r. a.
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 s. u. b. e. s. s. e. d. y. a. b. o. l. i. c. a. p. s. u. a. s. i. o. q. u. o. d. p. b. a. t. t. e. p. m. e. s. i. q. u. i. s. s. u. a. d. e. n. t. e. d. y. a. b. o. l. o. x. b. i. q. m. e. t. f. i.
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In p. r. e. b. i. d. e. f. e. n. d. e. n. d. i. s. u. a. n. t. i. s. a. m. i. c. i. s. l. i. c. e. a. t. s. i. c. s. u. b. s. a. d. i. i. m. p. e. n. d. e. r. e.
 Quare q. an p. r. e. b. i. d. e. f. e. n. d. e. n. d. i. s. p. r. e. p. u. l. s. a. u. i. o. l. e. n. t. i. e. c. u. i. a. r. e. s. a. d. u. o. c. a. u. e. a. m. i. c. i. s. e. t. e. i. s. l. i. c. e. a. t. s. i. c.
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In p. r. e. b. i. d. e. f. e. n. d. e. n. d. i. s. q. u. o. s. l. i. c. e. a. t. s. i. c. s. u. b. s. a. d. i. i. m. p. e. n. d. e. r. e.
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 a. u. t. n. o. s. i. n. t. h. o. c. u. r. e. l. i. c. e. a. t. i. a. u. t. l. i. a. d. s. i. n. e. f. f. d. e. u. i. e. d. e. l. i. e. t. e. d. e. c. a. u. s. d. e. o. f. f. i. d. e. l. e.

In p. r. e. b. i. d. e. f. e. n. d. e. n. d. i. s. q. u. o. s. l. i. c. e. a. t. s. i. c. s. u. b. s. a. d. i. i. m. p. e. n. d. e. r. e.
 Q. u. e. r. i. t. u. r. q. u. o. a. n. p. r. e. b. i. d. e. f. e. n. d. e. n. d. i. s. e. t. q. u. o. d. a. n. p. r. e. b. i. d. e. f. e. n. d. e. n. d. i. s. s. i. c. q. u. i. a. o. m. n. i. s. d. i. m. b. i. r. e. p. e. l. l. e. r. e. e. t. u. t. q. n. o. p. l. i. e. d. i. d. i.
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 v. i. m. b. i. r. e. p. e. l. l. e. r. e. e. o. i. n. h. u. s. e. t. s. i. m. i. l. i. b. d. e. n. d. i. c. a. t. s. i. b. i. l. o. c. u. m. q. l. i. c. e. a. t. v. i. m. b. i. r. e. p. e. l. l. e. r. e. n. a. p. t. a. l. i. b. i. n. t.
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 s. i. n. h. a. c. a. c. t. i. o. n. e. s. i. d. i. b. o. r. a. p. e. r. g. o. n. u. l. l. o. m. a. g. i. s. i. n. o. q. u. e. r. i. t. u. r. d. e. f. e. n. s. a. q. u. a. d. i. c. t. u. r. u. l. r. e. g. u. l. a. i. n. i. u. r. i. u. s.
 s. i. c. a. u. t. d. a. m. u. s. s. i. d. e. r. e. u. t. e. t. l. u. n. a. s. i. d. e. f. o. n. t. e. r. e. g. u. l. a. q. u. i. a. d. a. g. e. n. d. u. m. d. e. r. e. u. t. e. t. l. i. d. i.
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Quare licet hoc parulare bellum indere
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Quid sit moderamine inculpate tutele et que in eo requiratur.

¶ Et in dubio reuocatur quid uelint hoc uerba. Sic est illa que si illa que requiritur ad hoc moderamen. Contra doctores dicitur quod sunt illa que equiualeant illato violento in qualitate armorum in cursu temporis. Item equiualeantia in ipso actu violento, ne aliter excedendo censetur. Unde ex causa hoc dubitatur.

An liceat uili et debili cum ense se defendere contra fortem et robustum pugno contra paucientem.

¶ Et primo pone fortem et robustum homo, uult me percutere pugno, ego sum uilis qui non possum resistere pugno. nuncquid liceat michi defendere me cum ense. Videtur quod sic quod qualitas ubique est ponderanda, ut l. ult. c. de fenc. et l. i. c. de expen. et l. si cum dico. ff. de arb. reuila in iudicio. Ita res. ut l. i. c. de expen. In quibus uis non solum uult michi uolentem subripere, et ego duris corpore impio. Item puto de ense impio id fieret pensatio corporis ad rem, quod et non dicitur. ut l. ult. c. de fenc. ceterum. Ja. de ar. distinguunt aut quis uult impulsare violentia illam psonam aut illam rem, po. cau. licet et cum armis et qualitatibus, si res aliter reparari non potest. ut l. si quis d. ap. c. nam si possim cadere fuit ubi non agnosco, et si non potest michi in rebus fixatis puidet puidet ut l. si uerem ff. ad l. cor. de sic. multo magis licet cadere ubi psona aliter salua esse non potest. Et cum quod pectus tunc aut violentia rebus illata p uia iudicij reparari potest et tunc non licet qualicumque, ymo cum qualitate armorum non aut fuit quod non debet psona percutere, p defensione rei ubi etiam aliter salua esse non possit. dum modo p uiam iudicij reparari possit. Et aut p iudicium non potest reparari tunc licet qualicumque defendere etiam psonam cadendo, ut l. si uerem ff. ad l. cor. de sic. et sic intelligitur. l. i. c. in m. et l. in g. c. in i. ff. de vi. l. di. ar. sic igitur intelligit moderamine inculpate tutele.

An et si liceat in quantu se defendere, quid intelligatur illud in quantu.

¶ Et quod circa causam temporis qua dicitur rex quod si fieri in quantu queritur quid intelligatur in quantu. Aliqui dicunt fieri in quantu si fiat in ipsa fragantia, facti si aut fiat la illam inuria tunc de iudicio ad fenc. Alii dicunt in quantu fieri etiam si fiat postquam quod dicitur ad actus conuersos, ut l. qui in si. ff. de adult. Ja. et pe. distinguunt aut loquuntur de violentia illata psonae et tunc dicitur repelli in quantu si fiat in ipsa fragantia facti sic intelligitur. l. si autem. s. qui aliter ff. ad l. ad quilibet. l. si tunc. ff. de iust. et iur. aut loquuntur de violentia illata rebus et tunc dicitur in quantu repelli etiam post fragantia facti dum modo non dicitur ad actus conuersos, ut ff. de vi. l. di. ar. l. qui possessione. et l. in. c. de iur. c. in. Ratio distinctionis est nam illata inuria psonae non potest amplius restaurari si res ablata recuperari potest, et sic non fit diffusio ad actus conuersos etiam si amicos querat et reddat, ut recuperat dicitur in quantu ut non. glo. in d. l. in. g. igitur ff. de vi. l. di. ar. sic intelligit moderamine in cursu temporis.

De equiualeantia in ipso actu violento, qualiter fieri debeat.

¶ Tercio quod de moderamine in equiualeantia in actu violento, videtur quod fieri debet ad defensionem non autem ad vindictam, et hoc varie scribat, totum hoc ponderari debet in specibus quod dicitur psonarum. An si uideretur uidetur non defendisse, si spoliatores meos de possessione mea expulsi, quanto expellerem cum satisfacere uolebat de possessione restituenda. pa.

¶ Quarto quod quod expulsi me de possessione et post expulsi paratus est satisfacere de restituenda si apparet cum iuste non fecisse, si nichilominus ipm expulsi, nuncquid uidetur fecisse ad vindictam, glo. tenet quod sic. in l. i. c. de vi. l. di. ceterum glo. reprobat nam non debuit se committere illi fraganti muni. ff. ad treb. l. qui poterat, et l. si quod cum simili.

An paratum ad me percutiendum expectare debeat, uel cum peruenire.

¶ Quinto quod nuncquid si uideretur aliquis paratum ad percutiendum me, an debeat expectare quod me percutiat an debeat peruenire. glo. in d. l. i. arguit per et q. et determinat quod non debeat expectare (pe. dicit glo. intelligendam fieri distinctam psonarum nam aliqui sunt audaces et prompti ad percutiendum et tales non sunt expectandi aliqui timidi et tales non sunt statim perueniendi et sic modificat glo. ar. l. i. c. si quis impera. ma. dixit.

¶ An miles que uicinus ad gradum censetur. Unde repellere si expectet et percutiat cum aliter ualeat. pp.

¶ Sexto quod quidam aggreffus miles, est aggreffus adiano suo et euadere posset fugiendo, repellere (appet quod non. p. l. si autem qui aliter. ff. ad l. ad quilibet. moderamine. tenet quod p. l. in l. fenc. et honoris sui que non possunt puidet reparari. ut l. ult. ff. si quis. ob. ceterum.

¶ An si uulneratus post uulnera insequatur uulneratorem et ipm percutiat pueri debeat ut uolens, uel ut culpabilis. pp.

¶ Septimo queritur, quidam uulneratus, post uulnera insequatur

nuna. l. in pñiali. Itud aut remedium cōordinatū ^{ortu} remedium hñt ex mē gentiū. nā est quēdā
 spēs belli lñti. nam lñti est ob nūclam corpis sui anima mouere. ff. de iust. et iur. l. de dimi. e.
 vñ dñ. l. de rest. spo. e. olim. et nēdum corpis sui puatum et individualis. ymo et iusticiā
 nam vñsitas est unū corpū. cūm pñes. sunt singuli de vñsitate. ff. quod cuiq. vñsitas.
 l. i. et sic vñsitas lñti est dñdū. pñes sui corpis. hñt etiā ortum a mē diuino. ut le-
 gatur xxv. q. y. e. dñs nñ. de pñdīs omib. inferitur. pñ quid infererit. istud remediū. nam.
 finali ut iusticiā debiti fortiretur. effm occasionali pñ defectū. remediū ingente anaglectū.
 qñmānū et vñgentū pñes et carentia vñgentū supñas defecto. quo tñr fñt opus. hoc
 cōordinariū remediū. Et quo inferitur. qñ etiam hñdie. raro hoc remediū lñti sibi uendicat
 nam negligentē iudice scilicet pñes. rectius hñdus est. ad ecclesiasticū deforo qñ. ex tenore
 et dñ. licet. et c. ex pñ. qñ sibi. fñt legip. pñ uenerabile. l. i. cō dñcto male opampenit. qñ
 sic pñdū. restat examinandum qñ fñt cñt vñsitas. videlicet. **De cñt vñsitas. pñ**
Quē sit cñt pñductua. Quē formalis. Quē finalis. Videndum est etiā de qñsdam
qñs. circa hoc qñrentib.

De vñsitas.

effmā. sive pñductua vñsitas
hñp. Quē mñlis.

De pñdīs possit dñct vñsitas.

De cñt efficiēte sive pñductua vñsitas. qñs possit iudicare vñsitas. Sic attendū
 ad pñm quē sit cñt pñductua. hoc est querere. qñ ut dñt est. nulla lege pñsima cñctō
 ul cñcti disponitur. vñsitas iudici pñt. debere. nam utraq. leges disponitur. modis. qñsequē
 efficiē iusticiā. ymo inhibiti est. acupat. et pñia. cñcti dñt. l. si quis in iusticiā. et l. ex pñ. ff.
 quod mē. cñ. ymo etiā hoc cñcti inhibentur. lege cñcti. cñcti. ut in aliis. qñ. pñ. nō fñnt
 et c. vño dñ mñ. l. i. dñ. pñ. dñ. iusticiā. mñs pñsima remediū. ad hoc fñt hñdus vñsitas. ut fñnt
 belli iudici. ne dñct iusticiā. hoc aut belli iudici pñnt ad illū solum qui supñt nō fñnt
 ut l. hostes. ff. de cap. nam hñs supñt auctē pñia. nō pñ violat mñs remediū. Ille cñcti
 iudicare pñt qui supñt nō fñnt. et dñ. ut dñ. Ex pñt etiā qñ ille qñ iudici. nō fñnt
 supñt. ul fñnt negligent iusticiā fñnt. Ex quo quidam inferunt qñtō cñcti. que nō
 vñsitas supñt dñct. nō possit iudicare. nisi pñali. hñt in mandatis. pñ dñ. vñsitas ad
 vñsitas apñt quā est pñnt mñ. et cñcti auctē iudicent. Istud nō credo uerū. ubi vñsitas
 tñsulerit. omniōdā pñntem in rectore. nam tñc pñt totū quod vñsitas. sicut dñcti in
 fñnt qñntem cñ libet. ut l. pñ. qñ. ff. de pñ. scñs pñntem. Inferunt etiā qñctōes max
 cñcti ul similes. pñdū est pñnt. qñnt pñnt auctē iudici nō poterūt ut pñt vñsitas
 quā tñdū in cñcti. dñ rest. spo. Et hoc pñdū loquendū dñct cñ. nam pñloquā pñnt
 pñntem mñnt municipalū pñnt quē qñdū. facultas iudicandi vñsitas. illi iudicare pñnt
 vñt quib. alio municipalū qñdū. Et hoc ut dñnt qñdū pñntem necessitate sicut alii
 pñntem qñdū mñnt. facultas alio mñnt sibi dñct. ff. que iusticiā. cñ. l. aut pñnt
 dñ. pñntem. qñ qui aut clam. l. alio. qñ. bellissime. Ex pñdīs inferunt pñntem quē mñnt mñnt
 vñsitas. nam pñntem statuti qñdū. qñct. ex l. hoc pñntem. ff. de qñ. ex l. l. vñnt. Et aut
 loquā pñntem pñntem mñnt cñnt dñnt quidam qñnt actō nec offm mñntem. cñ. nā pñnt
 mñnt gentiū. hoc facultas qñdū. quo mñnt omnia qñntem. vñnt vñnt. ff. de ori. mñnt
 l. y. in pñnt. sic dñnt hñdie vñntem mñnt vñnt. pñntem diuina. pñntem gentiū. hoc nō
 credo uerū. nam l. facultas nō sit mñnt fñnt modus vñntem. nam pñnt dñntem ad vñnt
 modū ordinariū. quib. dñntem ad hoc vñntem. et hoc qñntem dñntem iudici requisito. ut iudici
 cat vñsitas. et si ille qñntem pñntem mñntem. qñntem audire pñntem. et iusticiā dñntem
 et sequitur pñntem quā pñntem. iudicandū. ul nō. Quarto fñnt opus actō ul offm. nā pñntem
 modū pñntem formari dñntem. ut l. ut pñntem. ff. cñnt dñnt. et c. l. hñnt. dñntem. Con-
 firmatur. nā dñntem dñntem gentiū. hoc facultas pñntem. qñntem mñntem qñntem est ex mñntem
 pñntem l. nō uerbis expñntem. nam est ex mñntem mñntem cñntem. ymo etiā expñntem. qñntem
 et mōdēntem mñntem pñntem. manu mñntem ut l. qui vñntem. ff. de rei. uen. et sic pñntem
 est remediū imploratis offm ut ad hñnt manu mñntem vñntem. remediū opñntem
 dñntem.

De cñ mñlis.

De cñ materiali vñsitas. Restat examinare cñntem materiālem. De materiāli cñntem
 cñntem est iudicandū. De materiāli mñntem. De materiāli cñntem quā. De materiāli qñntem quē
 obiectū. Et de materiāli. ex qua. Quid sit materiāli mñntem. Materiāli mñntem est
 pñntem. ul pñntem cui hoc facultas. qñntem. Quid sit materiāli cñntem quā. Materiāli
 cñntem quā fñntem. cñntem quā facultas. hoc qñntem. Quid sit materiāli cñntem quā. Materiāli
 cñntem qñntem fñntem obiectū est pñntem. qñntem quod qñntem. Et pñntem cñntem ul alia vñntem.
 Quid sit materiāli ex qua. Materiāli ex qua est cñntem ex qua hoc facultas. qñntem.

Civitas

Quibz republie produt.

Et deinde ad examinationem quero quibz creditur heri fraudes repulandi (Co. Cumqz creditur p. uen. supus rictum. na Cives sint p. mista corpore. i. civitas. ut. l. i. ff. q. cui. dm. hinc apellatus est civitas. q. Cumu. dntas. ut. no. in c. p. i. i. r. a. d. sen. exco. h. d. Et ut s. adducit. hanc est causa diffendere corpore sui. ut. l. d. d. m. p. d. u. s. i. et u. r. et l. i. c. d. d. d. i. et h. p. credit tam in corpore mistico q. in individuali. (Hic q. d. accurrit)

An incolis republie credantur. Debeant quidam hic distinguere an incolae fideant honora

omni

Et primo queritur an incolae credantur et tunc quod debeant an non fideant et tunc quod non debeant. Ratio si membrum non sentit hominem nec quodam sentit de. ut. l. manifestissimi. s. si in fronda. c. d. furto. regula. fm. nam. p. d. re. u. r. et. regula. qui sentit. h. d. pbat. p. l. qui sub preterit. c. d. epi. et cle. et l. i. c. d. col. illi. l. i. p. pbat. nam non habet quod privilegia. dignitates. nisi re ipsa ipam gessit. c. d. q. s. l. i. n. m. l. i. p. p. d. exat. n. l. si et milites. c. q. m. c. d. testa. mil. l. i. p. (Hanc opy. no puto vera indistincte. vmo puto distinquendum sic. Aut incola no subit p. eius germinata q. requisitus no uult subire. ut teneatur na me civitate recipiente que ad incolam. et incola tuat oritur quidam genus ultro. atqz obligatorius. que incola tenetur. subire honora. p. ad mu. l. i. et l. i. incola. et civitas tenet ad eius preterit. ut. l. illiatus. s. ne po. t. n. n. o. r. e. s. p. d. off. p. s. a. et h. c. au. p. d. n. e. q. u. s. adimplere. d. e. m. p. p. e. r. s. i. a. nec civitas tenetur. ipm defendere. nec ille ha. p. e. r. e. p. o. r. ut. l. u. l. s. o. f. e. r. e. p. p. d. a. c. t. e. m. p. Aut incola no subit honora. q. sup. h. c. privilegium facit civitate. que h. c. honora. remittere potuit ut. l. si quis in q. s. i. b. e. n. d. c. d. p. a. c. et d. e. p. i. et d. e. u. l. a. p. m. a. p. e. et tunc incolae credi debent nam privilegia q. s. s. a. m. c. o. r. f. a. v. o. r. e. m. r. e. d. u. n. d. a. r. e. n. o. d. e. b. e. n. t. i. n. c. o. r. l. e. s. i. o. n. e. c. d. e. l. e. g. l. i. q. u. o. d. f. a. v. o. r. e. r. e. g. u. l. a. q. u. o. d. o. b. g. e. a. m. h. d. Et h. c. intelligas de privilegio. post ascriptum

An Civis no subiectus iurisdictioni civitatis. et al. no facit. factus sit iudicandi republie. Et q. d. an Civis no subiectus iurisdictioni civitatis. et alias no facit. factus sit iudicandi republie. Cuiusdam distinguunt an no sint subiectus. subiecti ex privilegio. ut dicitur. ut. l. i. y. et aut parimus de epi. c. d. e. n. y. p. d. i. g. n. i. t. a. t. e. s. e. c. u. l. a. r. e. u. t. l. i. y. c. u. b. i. s. e. n. a. u. l. c. l. a. s. s. d. d. a. c. t. n. i. y. p. t. o. t. u. et t. u. l. i. s. u. n. t. q. u. e. d. e. n. t. a. n. n. o. f. i. d. e. a. n. t. p. q. u. i. m. a. a. a. et tunc no. Ratio p. m. ne redi det in ei lesione quod. in favore induci est. et q. in Civis ex naturae pficatur. obligatio. ut ipm et civitate que no pot mutari. p. ad munici. l. i. s. u. m. p. r. o. s. e. c. u. s. i. n. m. e. d. i. a. q. i. n. m. e. d. i. a. n. o. p. f. i. c. i. t. u. r. n. i. s. i. p. r. e. c. e. p. t. e. m. u. t. l. i. s. s. a. d. m. u. n. i. c. i. u. t. u. r. s. i. e. s. t. p. q. u. i. m. a. a. s. u. a. u. t. s. s. e. p. q. u. i. c. a. m. a. l. i. e. t. s. i. p. p. t. o. r. e. m. s. s. i. s. i. d. u. m

An Civis p. quentem. credantur. republie quia civitate origines no.

Veritas q. an Civis p. quentem credantur. republie q. Civitate origines. (Appet q. no. nam uis m. h. q. s. i. l. l. u. d. s. i. a. t. m. e. u. n. o. o. b. l. i. g. a. t. u. r. u. t. l. i. s. e. t. s. i. g. n. o. s. e. t. r. e. g. u. l. a. r. i. u. s. p. d. a. p. u. s. l. e. g. a. t. o. s. i. s. i. s. i. a. t. i. u. r. i. a. h. u. c. c. i. v. i. c. i. v. i. t. a. t. i. o. r. i. g. i. n. e. q. e. u. s. i. d. i. c. a. n. d. i. r. e. p. u. b. l. i. c. a. s. e. x. q. o. a. n. n. o. p. o. s. s. e. r. e. t. C. o. n. f. i. r. m. a. t. q. e. C. i. v. i. t. a. s. o. r. i. g. i. n. e. p. f. e. r. a. t. u. r. u. t. l. i. s. i. s. i. p. n. o. s. s. a. d. m. u. n. i. c. i. u. r. C. o. n. f. i. r. m. a. t. u. r. n. a. m. C. i. v. i. t. a. s. o. r. i. g. i. n. e. p. t. e. r. a. t. i. n. s. u. b. d. i. t. i. s. s. u. i. s. t. a. t. u. e. r. e. a. n. q. e. f. f. i. c. i. e. r. e. t. c. i. v. i. s. a. l. i. e. r. i. u. s. p. q. u. e. r. e. m. n. e. c. C. i. v. i. t. a. s. p. q. u. e. r. e. m. p. o. t. q. u. e. r. i. C. o. n. f. i. r. m. a. t. u. r. a. s. i. m. i. l. i. d. i. s. p. o. s. u. e. n. t. i. a. r. y. q. u. i. n. u. a. n. t. p. o. t. n. o. v. i. o. p. u. s. o. i. b. p. o. t. q. d. i. s. u. t. l. i. y. s. i. f. f. d. e. e. p. n. o. n. u. C. o. n. f. i. r. m. a. t. u. r. a. s. i. m. i. l. i. n. a. m. s. i. s. p. u. b. l. i. c. a. n. a. i. l. l. a. m. i. n. e. n. t. u. r. q. o. i. n. s. p. r. e. r. q. q. d. n. i. y. s. s. d. e. p. u. b. l. i. l. i. s. t. p. b. a. t. t. o. p. i. n. l. d. e. j. u. r. e. p. a. d. q. u. i. m. n. a. d. h. y. s. q. u. e. q. a. g. u. n. t. m. e. C. i. v. i. t. e. t. C. i. v. i. t. a. t. e. m. s. o. l. u. m. t. o. r. a. u. d. i. t. u. r. i. l. l. u. s. C. i. v. i. t. a. t. e. a. g. i. d. i. C. o. n. f. i. r. m. a. t. u. r. n. a. r. e. m. e. d. i. u. e. x. o. r. d. i. n. a. r. i. u. s. e. s. t. u. r. d. p. b. a. t. u. e. s. t. e. x. o. r. d. i. n. a. r. i. a. a. u. t. r. e. m. e. d. i. a. n. o. d. a. n. t. u. r. p. l. i. o. q. p. a. r. e. s. e. q. u. e. t. a. d. u. e. r. q. d. l. i. s. e. i. m. a. i. o. r. e. s. t. p. o. t. i. s. C. i. v. i. t. a. t. e. m. C. i. v. i. s. q. p. a. r. e. s. m. p. l. i. u. s. p. d. e. i. n. s. p. i. e. t. u. r. e. t. u. r. l. i. y. l. p. o. s. t. u. l. i. m. u. s. s. s. l. i. y. s. p. d. e. c. a. s. t. r. e. n. p. e. i. n. q. u. i. l. i. p. b. a. t. u. r. n. a. s. i. d. u. o. h. i. n. t. e. u. n. d. e. m. s. u. b. d. i. t. i. u. i. n. t. e. r. p. o. t. d. e. f. e. n. d. e. r. e. a. d. u. e. r. s. u. s. i. n. i. u. r. i. a. q. u. e. a. b. a. l. i. i. s. i. n. f. e. r. u. r. n. a. C. i. v. i. t. a. s. p. o. t. u. r. p. a. r. e. s. o. f. e. n. d. e. r. e. s. i. m. p. d. e. p. a. r. e. s. p. t. o. t. u. C. o. n. f. i. r. m. a. t. u. r. n. a. m. s. i. d. u. o. h. i. n. t. u. s. i. n. r. e. l. i. y. u. n. i. u. s. s. i. t. d. e. b. i. l. i. u. s. a. l. i. i. o. i. n. s. i. s. i. s. i. n. o. d. e. b. i. l. i. u. s. a. g. i. t. q. h. i. n. t. e. m. u. s. p. r. e. t. e. n. t. u. s. s. i. d. i. s. p. o. s. i. t. u. r. u. t. n. q. u. a. g. a. u. e. r. u. t. i. l. l. a. d. u. o. u. r. a. s. s. a. d. l. a. d. u. l. l. l. i. t. e. m. e. l. l. a. s. s. i. e. t. l. i. s. i. d. i. s. s. u. i. e. t. i. C. o. n. f. i. r. m. a. t. u. r. n. a. m. s. i. d. u. o. s. u. n. t. d. n. i. e. u. n. d. e. m. s. u. i. s. u. m. i. s. i. n. e. u. d. e. l. i. n. q. u. a. t. p. t. p. a. l. l. i. u. s. o. f. f. e. r. e. r. i. s. s. a. d. l. a. d. u. l. l. l. i. t. e. m. e. l. l. a. s. s. i. e. t. l. i. s. i. d. i. s. s. u. i. e. t. i. C. o. n. f. i. r. m. a. t. u. r. n. a. m. p. r. i. m. e. r. a. r. e. p. e. l. l. e. n. d. a. h. i. c. q. u. o. t. u. r. e. a. m. i. c. o. s. s. s. a. d. v. i. e. t. r. i. a. r. l. i. y. s. e. i. i. g. a. t. u. r. e. t. d. h. o. m. i. a. s. i. g. n. i. f. i. c. a. s. t. a. d. s. e. n. e. x. o. d. i. l. e. c. t. o. (Co. quidam dicunt indistincte q. possint iudicari Et no est q. facilius iudicandi republie facit in locu indistinctis. iurisdictionis. q. si civitas Cuius ostendit. licet est sup. p. o. r. e. m. a. d. i. s. t. i. n. c. t. u. r. u. t. l. i. m. e. n. t. i. s. n. a. d. u. e. r. e. c. o. n. d. u. m. s. s. q. m. e. n. e. x. g. o. d. i. s. t. i. n. c. t. u. r. i. n. s. i. d. i. c. t. u. r. l. o. c. u. s. e. r. e. p. u. b. l. i. c. a. s. p. b. a. t. u. r. p. l. i. s. i. s. i. s. e. x. d. i. l. o. s. s. a. d. d. i. l. o. C. o. n. f. i. r. m. a. t. u. r. n. a. m. q. u. e. l. i. b. e. t. p. o. t. i. s. c. o. n. s. e. n. t. l. e. g. i. s. l. a. t. i. o. p. o. t. i. s. c. u. m. q. u. e. d. i. s. t. i. n. c. t. u. r. n. o. a. u. t. e. i. s. p. o. h. i. a. t. u. t. l. i. e. i. q. u. i. s. u. n. d. u. m. s. s. i. a. n. t. u. r. s. s. p. o. m. p. s. s. d. e. f. i. n. t. l. i. n. t. e. r. d. u. m. s. q. u. i. n. u. e. l. a. m. e. t. s. i. c. d. i. c. i. t. u. r. p. r. e. d. e. r. e. h. i. n. c. i. n. d. e. a. l. l. e. g. a. t. i. (Ego no puto hanc conclusionem sic indistincte vera. s. puto distinguendum an iurura iuragata. a civitate origines. iuragata

சி. வ. பி.

india representat. q̄ clericos eosdem p̄ iudicem secularem. de clericis suis nec h̄ci pot̄ recursus
 q̄ dicitur queritur an si ep̄o negligat faceret iusticiam ad sup̄iorem q̄ ep̄o est satisfactorius
 an possint q̄ clericos india representat p̄ iudicem secularem. secundum in hac dubitatio nec est du-
 bitandum quia laycus nulla accessit p̄tate q̄ clericis qualitercūq̄ delinqueret ut e. q̄m̄p̄t
 et e. in audientia de sen. exco. et e. si iudex laycus e. n. l. d. poterit ergo coherere p̄ sup̄iorem
 p̄m̄ et poterit h̄ci recursus ad iudicem secularem p̄ viam iuocatois ut e. i. de off. or. xij. q.
 v. regum et e. administratores et o. p̄ncipes.

¶ An q̄ bononienses ul alios studentes bon. cunctos padua p̄ studio exerce possint representat.
 ¶ Decimo q̄ an q̄ bononienses cunctos padua p̄ studio possint exerce ul ead p̄udentes
 bon. ex. est q̄ no in aut h̄ta. e. ne si p̄p̄e. et h̄ci uendicat sibi locū si p̄udent m̄ca i. loca
 p̄m̄legatis p̄m̄lio p̄dip̄ secus aut si in alijs p̄udent m̄ca ut in p̄m̄o. q̄. g. h̄ci aut t̄ra
 in alijs aut facultatib̄ ubiq̄ d̄cti pot̄ ut. p. f. d̄ias g. ai aut ff. de exco. m. et quod d̄m̄ est
 de scolarijs idem d̄ctis de scriptorib̄ et de bedellib̄ et accedentib̄ cā scolarijs ut l. r. ff. de m̄te.
 et l. i. de bo. pos. ex. m̄li. Idem de p̄re et alijs ignatis qui uent ad uidendū filij et agna-
 tum in studio ff. de iudi. l. y. g. idem in glo sup̄ uerbo uenerit.

¶ An q̄ ambaxiatores india possint representat. cleric. so. no poterit ut l. f. de legat.
 ¶ Octauo q̄ an q̄ bononienses ambaxiatores possint ff. de iudi. l. y. g. legat. ino d. p. q. c. f.
 ¶ An q̄ euntes ad nūdinas ad p̄m̄ Jacobū ul al ad illū locū indulgentie. Idem an q̄ nau-
 gantes et an q̄ illos qui in uis uacari non possunt et multas alijs cūb̄ exerce possit representat.

¶ Nono q̄ an q̄ bononienses cūtes ad nūdinas possint exerce (ex. est in l. r. de nūdinas)
 q̄ no an q̄ bononienses cūtes ad p̄m̄ Jacobū ul aliam p̄m̄natiōem possint exerce. l. r. no
 ite de cler. p̄p̄e. p̄ totū et cūm. si quis compertus xxiij. q. y. c. tota. de sucep̄ aut om̄s
 ibi libere Idem de eunib̄ ad locū indulgentie p̄ tenendum hospitij ul aliquid simile in
 p̄m̄tū accedentū p̄ indulgentia. An q̄ bon. nauigantes qui in uentore p̄p̄erunt ad eund
 iudicem exerce poterit. l. r. no p̄ aut nauigra. e. de p̄re. ad idem. e. de nauis l. l. h̄ci.

¶ An etā q̄ illos qui in uis uacari non possunt poterit exerce qui em̄nati in l. y. ff. de ius uo. p̄.
 no. r̄o. nā si p̄rent q̄d̄pnati no possent capi. multo minus p̄d̄icti ul d̄icti alterius h̄ci p̄er
 poterit. ex quo inferetur q̄ si bononiensis elligeret in p̄m̄tū mediolan̄ ibi no p̄set d̄panerij
 vigore uos saluare. Idem si bononiensis uer ad ciuitate mediolan̄ p̄ finis q̄m̄gunt. Idem
 in similib̄ cūb̄ qui enumeratur in d̄a. l. y. ff. de ius. uacando.

¶ An q̄ bononiensem p̄m̄tū mediolan̄ ibi inuiscia faciente possint neci representat. p̄m̄ta.

¶ Decimo q̄ an q̄ med. bononiensem p̄m̄tū mediolan̄ ibi inuiscia faciente possint neci de
 representat. Ja. de bel. in aut ut no fiant p̄m̄o. tenet q̄ sic p̄ l. r. ff. quod quis. ut. alij d̄m̄gāt
 an fecerit talis inuiscia p̄qua querui no possit officio durare ul sit talis qui querui no
 possit ut l. p̄re l. r. de iudi. et l. nec magnus ff. de iur. et nec no possint india
 p̄m̄tū aut officio poterunt india p̄re requisitū p̄m̄tū nec d̄ requisitū iudex ciuitatis
 sue quia ibi no d̄ querui r̄o talis q̄m̄si. Qd̄ d̄ d̄ m̄ca. agi op̄. l. r. et y. et e. ut d̄o
 tam aut q̄ m̄li. l. r. et m̄ aut ut iud. p̄m̄tū que sup̄ g. necessitate. Si aut tales sint qui
 querui possint tūc poterit india h̄nc p̄. no p̄u uerā in h̄ci p̄o m̄bra nam representat
 ind̄ctur in d̄p̄m̄tū inuiscia d̄p̄m̄tū. Si ergo durante offio querui possint et i
 loco q̄m̄si ut in l. y. c. d̄ d̄ r̄a. et ut om̄s. tā aut q̄ m̄li. l. r. ad quid est opus repre-
 sentat. Nec p̄u uerā in p̄mo m̄bra ubi d̄at q̄ p̄m̄tū officio possint india nā p̄m̄tū o
 officio possint querui et iuris forma p̄uari ergo no est opus h̄ci r̄m̄edio p̄m̄tū in q̄ d̄p̄m̄tū
 aut d̄ d̄ p̄m̄tū m̄ra no p̄set neci recurrendū esset ad representat. et h̄ci aut no est re-
 querendus iudex ciuitatis p̄p̄e. q̄ sup̄ h̄ci no p̄t m̄s facere p̄m̄ra sup̄m̄s allegata.

¶ An q̄ officiales p̄m̄tū ul rectoris inuiscia faciente india possint representat.

¶ Undecimo q̄ an q̄ officiales p̄m̄tū ul rectoris inuiscia faciente possint india representat.
 Ja. de bel. tenet q̄ sic alij d̄m̄tū h̄ci uerū ubi officiales ex p̄te inuiscia rectoris ad faciendū
 inuiscia ut e. de aduo. d̄l. m. l. p̄ h̄nc. Et ep̄m̄. m̄li. l. p. l. y. Si aut officiales ex p̄te
 querui p̄m̄tū no possint q̄ talis india. l. quonia. e. de ap. Si aut officiales nec q̄m̄tū no
 querui quia absentes ul ignorantes tūc ead no possunt ut l. r. in p̄n. ff. de ma. que.
 Si aut sint p̄m̄tū nec q̄m̄tū nec q̄ d̄m̄tū tūc sicut officiales deputati ad m̄m̄tū inuiscia
 officij qui no uacant ad q̄m̄tū ut sunt notij et sen et in d̄m̄tū tūc ead q̄ tales no p̄m̄tū
 india ff. de ma. que. l. r. et ad quia no possunt cessare ut e. ut om̄s in aut q̄ m̄li. l. y. g.
 officij Si aut sint officiales ap̄m̄tū ad q̄m̄tū q̄ illos poterit india. An q̄

¶ An q̄ q̄m̄tū p̄m̄tū aut p̄m̄tū inuiscia facere denegantes india possint representat. p̄m̄ta.

¶ Duodecimo queritur an q̄ p̄m̄tū q̄m̄tū ciuitatis denegantes facere inuiscia possint

india. Ita de bel. dicit q sic. alij dicit hoc uerū q pſentes, ſecus in q abſentes, q q coe ut qſules,
india nō poterūt, ut l. r. m. p. n. p. d. mag. que. ¶ dicitū dñi ul alcerius pñari de qua
¶ an q ſingulares, pſonas penitus innocentes, p iuſticia nō ſit india poſſint reſſalie.
¶ ſecundū qd an q ſingulares, pſonas poſſint india que ſint penitus innocentes, p dicitū
dñi ul alcerius pñari, de quo nō ſit iuſticia, ſa de bel. dicit q nō, quia nō dñi que, grauari p
delicto alcerius, regula. nō dñi. de reg. iur. l. d. alij q. p. e. dñs xxij. q. ij. nā ſua interdi
punitur ſingula etiā innocentes, ut e. ſententia, de ſen. epro. l. d. Etā in bello iuſto ca
pantur, innocentes, ſi reſſalie ſunt quoddam bellū pñalate, etiā l. capius ſit innocens,
in ciuitate ſz mo mēu, et hoc ut pñari.
¶ an q hoies ſubditos, quo ad quid um ciuitatis, nō aut plene poſſint india, reſſalie,
¶ ſecundū qd an q hoies ſubditos quo ad quid, ciuitatis bonitatis, nō aut plene india
poſſint reſſalie, eo ſi ſint ciuitates, ul diuſitates ſimpliciter ſupiet ciuitatis boni, ſi ex pñ
ſint aliquas exceptas ul iurisdictiones q ſtas india nō poterūt q nō ſint ſubdit que ſit
libere, ſi quo ad quendam ſe ſubiecerūt, et q ſtas p dicitū dñi ſtas eae ſubiectus, nō m
diantur, reſſalie, q ſint libere, ut l. nō dubio, p de cap. ſi p dicitū dñs ciuitatis india
poterūt reſſalie, ſunt et bellum ſtatū fieri poterūt.
¶ an q certū genus hoium facere iuſticia denegandi india poſſint reſſalie.
¶ ſecundū qd an q certū genus hoium iuſticia facere denegantium reſſalie poſſint
india, et dicendum q ſic ſuata forma.
¶ de materia ex qua.

Refert uidere de cā materiali ex qua impunt reſſalie, et oſt de ſectus, iurisdictionis,
nam pmo dñi requirit iudex, qui ſi negligat nec ſci pñ reſſus, ad ſupioris tñi qdñ.
¶ Et pmo qñ quo dñat requirere iudex
¶ an requiri debeat iudex ut iuſticia faciat, an q reſſalie qdant, ¶ Et po. qñ quo,
debeat requirere iudex, ut iuſticia faciat, eo pñs iuſticia paſſa, et iudex reſſante,
negligentia dñi adue rectore, ciuitatis pñ et facere ſidem de requirere et negligenti, et
pñs ut iterato requirit, iuſticia faciat et tunc eo negligentia poterūt india, q aut
requirit pñs requirere, pñatur, in aut. ut dñi. iud. in pñ. cō. m.
¶ an iudex iuſticia paſſi qui nō audet ſequere, in ciuitate iuſticia infernas poſſit ſeri
dere ut in alios iurisdictionem pñget, ul arbitrio, eligat. ¶ pñs iuſticia an iudex ſius,
¶ eo qñ an ſpñs, dubitaret ſpñs in ciuitate, iuſticia infernas poſſit ſeruire, ut in alios pñs
gene iurisdictionem ul eligant arbitrio, iure cōm ut pñs pñs, pñs, ut pñs iuſticia,
hoc claſſi q ſic, ut l. m. p. e. qñ, iud. m. pñ. et dñi. iure Canonico hodie laicus, pñſſi
¶ an iudex requirit debeat ut iuſticia faciat, ¶ faciat, eo pñs dñi requirit iudex ciuitatis,
adit pñm ſupior, quo dñante adit pñs, in aut ut dñi. iud. in pñ. Cūb omib
deſſantib india reſſalie, p ciuitate pñia que ſuodit, in loci deſſantia, iurisdictionis
ex aut nō negligat ſi iuſticia faciat, pñnando inq, tñi pñm, hñt iudex apelatoris
deputati, dñm p apelatoris, adhibere, et ſi nō hñt india reſſalie, nam qñ quid impunt
ciuitatis, que nō deputant iudex apelatoris, ſi aut duo iudices, apelatoris iuſticia ſecut
tñi nō pñs, deputati, omi ſubſidio, ſi nō hñt tñs apelatoris, nec uident poſſe india
reſſalie, ſi nō deſſat iurisdictionis, ex dñi pñ q ſi ob gram, pñs inq, pñnando tñi
pñ poterūt reſſantia, ut l. pñs pñs, pñs. de mmo. ſi aut ob gram, illa, qui requit tñi
pñ tñerentur ad intereſſe, ut e. nō. l. pñ. et de hñs, qui pñ. et ſic ad intereſſe re
nēnt acit in ſem pñs pñs, nec quidam, ſi aut inq, ſi ſi, q ſolo india moti, ſi
et deſſantia omi ſubſidio, ut ſi deſſantia qñ.
¶ Qualis iuſticia requirit, ut reſſalie qdant, ¶ dñant, eo pñs dñi nō india
¶ ſecundū qñ qualis iuſticia requiritur, ut reſſalie in ciuitate, ſi hñt ſi tñm dñi
ordinatū, quib nō dñatur, pñs, ut l. pñs. pñ. de m. m. reſſ. et l. pñs. pñ. de dñs. Requirit
etā q totale ſit ius lēſim, ſecus, pñnando, ut l. qñs, et de pñs, iud. off. nā totale
iuſticia nō ſit, et de pñs, ſi pñs, et l. m. g. in cū, pñs dñi. m. pñs.
¶ Quādo dñat nō poſſe hñt copia ſupioris, ut ſit laus, reſſalie, ¶ reſſalie, eo.
¶ ſecundū qñ qñ dñatur, nō poſſe hñt copia ſupioris, ut ſit laus, india, ſi nō pñ hñt
de iure nec de ſco, tñi eſt opus, reſſalie, ut l. dñs. xxij. q. ij. et l. nullus, et de india,
ſi aut de iure ſci pñ nō in dñs, qñ nō obſtat tñi dñm, ſi aut ſci pñ de ſco nō de pñs
ut e. dñs, iud. pñs, ſi dñs, ut nō, india in dñs, dñs, et dñs, dñs, ſi dñs, dñs.

represalijs

De iure ex diuino est fieri de iure ut pote impator cu sit ualde distans et pe est paupama
tuc etia laus est. ff. de p. act. si fues. ff. de diu. et tem. p. scap. l.

De causa formali. Rubrica. Et hoc est duplex na est forma indicendi et est forma

Respondeat uidere de ca formali. Respondens forma aut indicendi imphat forma defen

sione. illud q que indicant et orca hoc etia deplurib queritur. cedantur. hic dnt

Quo iure represalijs cedunt. Et pmo querit quo iure q aliqui q cedunt

pillos qui no recognoscant supiore ab illis hoc peti no dz iure actis nec p officiu s dz

requiri manus regu p qua omnia expediant. ut. l. n. ff. de ori. iur. Eolu em illud requi

ritur quod ius gentiu requirebat. s. q. a p qua cedunt sit uera salus in defensionib

illi q que cu hoc sit iuris nalis ut in illis pporalis. g. ceteru de re iudi. et hinc repsa

liae sufficit ostendere qessione sine alio passu et recte psumitur cetera agitata na

instar et facultate disponere de iudicio pmaxia ut l. fac. sacre legy. et de sacre et

hoc uera in reuocato cedente. Veru q qens q qua cedunt un possit eodem iure p ti

q quis iur. et si alit opus de hoc debet qnoscere ut puta arbitri ul alij. inuideret hon

plandi illi q au sunt qesse. suata fore ea que iure gentiu requerunt. ideo iuris est

q fiat pcessus et in scriptis cedatur et hoc tenet necessitatem. in c. vincto. de iur. iudi. l. h.

nam tenet q pcedere dz monito et fma sup negletem. et ita sentit siml. qordi epus.

Si aut represalijs petuntur ab illis quib hoc qessum est astutus tuc pstatum tradit ordine

ille dz pueri. Si aut nullu tradit ordine tuc quia finalitas cedendi represalias pcedit ante

causa cu statuta sint mo. amle. ut. l. homo. p. l. ff. de inst. et iur. tuc dz implorari offm off

cialis. Rubellus. poris. p. a. et pcedi ut disponit iura.

Que opere possit ad impediendum ne represalijs indicant. Et

So queritur quis qparete possit ad impediendum ne idatur. de testi. c. veniens. de

re iudi. c. cu sup. Interest aut pti q que indicantur ut sic hns mandatu admittitur. 2

quibet de pto sine mandato admittitur. q amissibet interest. ff. de no. op. nu. ff. in

pntiali. s. si. admittent etia illi qui sunt de pto indicantis. quia interest ne iuste indi

cantur ne eodem iur. utant q eos. ff. q quis. iur. in rubic. 2 p totu. iugru.

Que defenso. querunt illi quia quem indicant. Et

Cecao q que defenso. querunt illi q que petunt. mo petendi ul r. p. sone. ul iuris

in petentis. ul q paratus est emendare. ut. c. dno. ne. x. q. 1. in p. possit p. veniaari

fuit iur. Ecce eligatur. rector. Cuntatis boni. qui iurat no petere represalias. q. iur. tuc

nuquid obstat exceptio veniaatis. So. si passus est iura. p. iniqua q. depratam tuc

q in modum appellatis recurritur ad iudice ppetu. in la. i. efficietas. iur. i. d. c. o.

si p. veniaari. p. o. p. lator. ut. l. l. l. c. de tem. ap. Si aut iussus sit iura tuc p. nulla opatur

effectu. q. remittetur dno. futurus. ut. l. l. l. c. de tem. ap. Si aut iussus sit iura tuc p. nulla opatur

Qualit. q. subit de iusticia p. ul. ex denegata. ul. ex denegata. So. p. acta p. m. iudic.

Quanto queritur. qualiter. q. subit de iusticia p. ul. p. t. p. et requirit p. p. m. iudic.

ut. f. i. a. c. o. p. a. et p. i. a. t. h. e. s. t. i. m. p. i. a. s. f. i. a. t. u. r. ut. p. y. c. ut. l. i. p. e. n.

An si aliqua capiantur vigore represaliar. deponeri astant ut ex pmo decreto an p. p. p. p. a.

Quinto queritur an si aliqua capiantur vigore represaliar. deponeri ualeant ut ex pmo decreto

an ex p. So. si iudice sunt represalijs pte acta et q. p. e. n. t. et l. a. t. u. r. p. p. h. q. f. i. n. i. a. t. u. r. c. a. d. p.

tinetur ex p. iudice ut ff. de re. iudi. l. ad iudice p. o. Si aut no q. p. e. n. t. tunc p. m. i. a. t. u. r. l. a. t. u. r. a.

ut capiat ex pmo decreto ut affectus odio ueniat et sequitur p. f. u. e. r. a. u. t. t. u. r. t. u. r. d. i. b. i. t. a.

deponendi ex p. decreto.

De forma cedendi represalias.

Respondeat uidere de forma cedendi represalias. indicans. Et orca hoc querit de plurib

an liceat illi cu sunt qesse represalijs iudice p. p. a. ul. p. m. i. n. i. s. t. r. o. s. q. e. d. e. n. t. a. s. c. a. p. e. h. o. i. c. o. s. q. u. o. s.

f. Vin. pe.

¶ An statuti ciuitatis quo canetur, qd filius teneat p pcc delinquento possit exheri
 filius existens ex territorio ciuitatis q cadentes. ¶ filius teneatur, p pcc delinquento
 ciuitatis qd an statuti ciuitatis, quo qd canet, qd possit exheri q filius existens, ex
 territorio ciuitatis q cadentes. (Co. aut filius, erat natus tpe delicti qmissi, apcc et tuc
 aut qd nunquid fieri possit excoacio statuti q filiu alibi existens et no pot. ur. l. a
 duo pre. g. p. ff. de re. iudi. et. l. ci. re. unius. g. an re. ff. de bo. auc. iudi. pos. aut
 qd nuquid qdnta ex illo statuto agi possit, qd eu et pot qd actio, ipm sequit cu opett
 c. de lon. tem. pscip. l. fi. her. f. uera, nisi filius, an d. licet qmissum qruisset alibi domi
 aliu. ul mda foret re antique origine, qd tuc illa ciuitas, ut pueniens, posset illu
 defendere ab illo statuto. (Sicut filius natus sit post qmissum delictu, tuc no agit
 q illu na statutu intelligitur, de filius, tuc hias, ff. de nox. l. m. d. h. m. g. si excoacus
 ff. de mil. re. l. si coacus, Idem dico statutu, h. q. b. m. de nulla, teneat p delicto alioquin
 effectus denorio ho illius, no mte, p d. b. m. antiquo, ut c. de decur. l. p. m. d. n. et. no.
 dy. m. l. incola, ff. ad munu

(de duello. usq; ad finē.

Similegi vocali.

si uerbis ut uerbis stat allegatio. Dicitur ad puritatem gloria uel odii exaggerationem. nam per haec tangitur finis et eliciuntur species duelli ut infra sequuntur. Concluditur igitur descriptio duelli in genere per supra dicta.

Quot sint species duelli. Quod duellum ut est descriptum sumit generaliter et ut tetigit in fine. Iuxta primum est aduertendum. Descriptores species duelli eliciuntur per uerba posita in fine. nam tres sunt species duelli. scilicet cum duellum aut per odii exaggerationem aut per gloriam in publico quosdam ex uerbis corporeis aut per puritatem alicuius criminis imputati.

Qualiter duellum fit per odii exaggerationem. Solo odio originali naturali et naturalitate finis propter igitur exaggerationem fit cum aliqui gulari que apud naturales forma specifica appellatur inducitur ad se invicem exterminandos et de hoc duello non repro aliquod uice causam per principis naturalibus hoc emittit ut stat persequar et per sensuali experientia hoc est approbatum.

Qualiter duellum fit per gloriam in publico quosdam. Sit et sic per gloriam in publico quosdam ut in publicis spectaculis cum duo viros corporeos. Darius modo expunt et de hoc repro uice causam et causam et canonico lege cuius ut l. hac actio s. si quis in colutatio ff. ad l. ad quilibet et l. vna c. d. gla. tol. h. p. c. de re iudi. l. q. modis ff. de his qui no. in fa. l. actore c. de actore l. i. c. que res p. ob. p. l. spe. ff. de donat. l. donat. no. glo. in fa. d. hedi. que ab. inter. d. ff. g. interdu. Legem canonica. d. de pu. mdu. l. etia ibi fiat per puritatem d. corne. p. totu. l. no. fit per duellum s. panera tum ut l. hac actio s. si quis in colutatio ff. ad l. ad quilibet.

Qualiter duellum fit per puritatem alicuius criminis imputati. Et approbatum provocans sit et teras per puritatem s. cum aliqui committit alicui inponit forte carens aliis perboribus ut etia non carens offert se perbatum uerbis corporeis duello suscepto et provocatis sic se pugnat et de hoc de huius etia in causis de pu. in duell. ut d. allegant. de pur. bul. prout in q. d. q. prout illam quam et in lombard. ut i. persequar. cum illud membrum distanti.

Quo uice fit permissum et quo inhibiti duellum.

Iuxta tertium uidetur quo uice fit introductum duellum. Expedit singulas species duelli supra positas copiose declarando circa singulas quo uice inducantur et quo inhibentur. Et primo de duello pueriente per hodie naturalis exaggerationem. Sed sciendum quod hoc duellum in eo ductum est uice naturali ut sumitur uice naturalis per instinctu nature pueriente ex sensualitate ad aliquid appetendum ut sumitur in po suo significato ut no. glo. i. d. uice naturalis et l. i. g. uice aut naturalis ff. de insti. i. uice. Et ipso duellum est inhibiti uice naturali ut sumitur uice naturalis per instinctu nature pueriente et rationabili intelligentia que appellatur naturalis comitatus. Et est tertius modus uice naturalis ut d. c. uice naturalis. Est etia inhibiti uice naturali continente precepta moralia legis diuine ut dicitur quarto modo ut c. stat allegato. Est etia inhibiti hoc duellum uice politico s. canonico et civili. Expedit enim singula demonstrare.

Qualiter duellum quod fit per odii exaggerationem fit introductum uice naturali sumpto per instinctu nature pueriente ex sensualitate ad aliquid appetendum.

Dicitur quod hoc duellum est introductum uice naturali ut sumitur per instinctu nature pueriente ex sensualitate ad aliquid appetendum. hoc sic demonstratur quidquid est productum cum immediato alicuius effectus persequens est productum illius effectus si istud uice naturalis originali inclinatio ad se appetendum est cum inducitur huius sensualitatis appetitus ad duellandum ergo est cum duelli inducitur effectus ff. ad l. cor. de sic l. nichil. c. e. n. l. si quis uicandi. l. d. si uideat et c. si quis uicandiam de homine de ceptero et c. p. d. m. pbatum minor nam ex naturali dispositione pueriente principis naturalibus et superioribus et inferioribus puerit in huius varia appetitus inclinatio nam accensum quolibet merito uel demerito ubi naturaliter placebit quod michi displicet et eorum et ex naturali dispositione quibus circumscripto accidentali quocumque diligit et odit quolibet hoc ex perire pot in se ipso. si cum huius est contra appetitus temporis celestis nam naturaliter quod naturaliter in momento naturaliter hant uniformem correspondentiam figuratorem celestis et propria paterne conformem in plenioribus paulatim sunt amassim naturaliter sic prepuerantes hinc inde sunt minimissim nam ab uniformi cum de insurgere uniformis effectus c. ad l. fil. l. ult. ff. ad l. ad quilibet illud ff. de fonte l. i. de q. st. traslato et c. in cor. poralia de traslat. prela. Et in est hoc attendendum quod hoc inimicitia naturalis in huius et huius ut predictum puerit ex singulari naturali dispositione que forma specifica apud naturales incipitur nam alicuius naturali dispositione speciei humane in huius de eo amicitia per uniformem.

(for maffia)

(for maffia)

tatem. q[uod]plexionis relate ad formā humanā, et p[er] ea dicitur uita q[uod] me[us] ho[m]inem et ho[m]inem est offi-
 humanitatis hanc m[od]o, impendendum. ut. l. si fume in fi. p[er] de fume, expor. et l. offi[ci]o. c. d. ne.
 de. et ibi gl[oss]a. et sic nō infurget, h[ec] ex n[atu]rā dispositio[n]e, h[ec] q[uod] h[ec] n[atu]rā nō est rep[er]ire si que-
 reatur p[er] sp[eci]es singulas, dualium. Nam in singulas sp[eci]es brutorū est quoddam fedus
 quicquid, et cohabitatio[n]is p[er] d[ist]ributione[m] q[uod]plexionis relate ad formā specialem, s[ed] inter
 sp[eci]em et sp[eci]em quāq[ue] est extremū repugnantie, inductorū ad alterius extirpationem. ut est
 anapit[er] et auid[us] aucupabilib[us], muralega et murib[us], canib[us] et leporeb[us], et sic de singulis p[er]
 uenit. igitur, h[ec] ex quadam repugnantie individuali dispositio[n]e, p[ri]ncipio sup[er]iore et inf[er]i-
 vior[um] effectū quilibet in se experitur. Illa t[ame]n dispositio nō inducit regularit[er]. immediate duell-
 lum s[ed] p[er] medice actus, ad quod p[er]euenit. s[ed] t[ame]n cred[imus] q[uod] tanta poss[et] ee repugnantia indivi-
 dualis dispositio[n]is q[uod] subito ad id p[er]ueniret, et h[ec] p[er]uenit cū requirit[ur] sola sensibilitate,
 et nullo r[ati]o[n]is d[ist]ributione. Ex h[uius] aff[er]t q[uod]clisim[us] qualis h[ec] duellu[m] introductū est, uita n[atu]rā
 sic sup[er]to.

Qualit[er] duellum quod sit p[er] o[mn]i exag[er]atione[m] sit inhibiti uita n[atu]rā sup[er]to p[er] rationabili
 intelligentia, et uita diuina/ Canonico/ et Cuius. Brum. dicebam eni[m] q[uod] h[ec] erat inhibiti
 Restat uidere quod dicebam s[ed]o. circa h[ec] men[tem] uita n[atu]rā sup[er]to p[er] rationabili intelli-
 gentia, et sic uita gentiū/ et uita n[atu]rā p[er] q[uod]nec p[er]cepta moralia leg[is] diuine/ et uita cano-
 nico et cuius. h[ec] h[uius] clarus demonstrari p[otes]t inapiendo a lege diuina (nam h[ec] est uita
 de p[er]ceptis/ de illo q[uod] nō accidet, et sic lege diuina inhibiti/ et h[ec] est regulare p[er]ceptū
 et si deum, instantia, de p[er]cepto, quicquid accidet filia/ nec t[ame]n potant/ lege diuina/ Iudici. b. c.
 xxij. q. iij. vniuersusq[ue], xxij. q. d. s[ed] nō licet, et de banson qui multos et se accidet, uidet
 xli. c. xxij. q. d. s[ed] nō licet, nō ob. q[uod] h[ec] f[aci]t fuerit sp[eci]es f[aci]t inducta. ut scribit augustin[us]
 in. li. p[er] de ciuitate dei, t[er]cia sup[er]me/ h[ec] n[atu]rā m. c. s[ed] nō licet. xxij. q. d. sic igitur, lege diuina
 inhibiti est, p[er] illud p[er]ceptū nō accidet, de utroq[ue] nom[ine]. v. c. Est eni[m] inhibiti lege canonica
 de hominib[us]. l. d[ist]inctio. q[uod] p[ro]tū, xxij. q. d. s[ed] nō licet. Est eni[m] inhibiti uita cuius, p[er] ad
 l. cor. de sic. et c. c. p[ro]tū. Et si dicat illa uita, inhibent hominib[us] uoluntariū, et sic h[ec]
 genus duelli ex quo illud p[er]uenit, s[ed] hominib[us] p[er]uenit ad uellu[m], introducto ex n[atu]rā dis-
 positio[n]e, nō est uoluntariū, ex quo n[atu]rā est introductū. ergo illa uita nō asserit h[uius]
 causam. s[ed]o. est p[ro]mpta, nā h[ec] n[atu]rā dispositio corporea, h[ec] introducat t[ame]n n[atu]rā intelligentie
 dictamē disp[er]sit in q[uod]uā, cui obtemperandum ē, nam illa n[atu]rā dispositio nō necessitat, ymo manet
 lib[er]ū arbitriū. xxij. q. iij. de t[er]re. et c. nabuchodonosor, et c. sicut eni[m] de p[er]nit. di. y. et
 p[er] h[ec] 3. ethicorū. ymo et astrologi h[ec] efficacius demonstrant, h[ec] idē aff[er]unt, d[icit] inquit
 tholomeus, in Centiloquio in lib[ro]. d[icit]amo. d[icit]a sapiens d[icit]atur ast[er]is, sic igitur, h[ec] dispositio cor-
 poreā, p[er]uenit a n[atu]rā p[ri]ncipio, t[ame]n n[atu]rā intelligentia manet et in q[uod]uā disp[er]sit, sic d[icit]
 p[otes]t de singulis g[en]tib[us] duorū moralium, nam n[atu]rā singuli ho[m]ines, ad singula inclinat
 d[icit]a. ut quidam sup[er]bi/ quidam luxuriosi/ quidam auari/ et sic de singulis, nec t[ame]n excusant[ur]
 q[uod] p[er] se nō necessitant, ut c. nabuchodonosor, xxij. q. iij. hinc est quod d[icit] p[er] h[ec] 3. de aia
 tractatu. d[icit]mo quod m[od]o ap[er]tū sensitiuū et intellectuāle est quāq[ue] repugnantia, nam
 sensitiuus tendit in d[ist]inctū intellectus, in aliū. et si intellectus d[icit]at sensum motus est
 rationabilis et n[atu]rā, sicut s[ed] p[er]a sup[er]ior, moueat inf[er]iorē/ d[icit]at eni[m] fiat motus, est q[uod]
 natura ac s[ed] p[er]a inf[er]ior, moueat sup[er]iorē, h[ec] eni[m] motus sensus, p[er]uenit a n[atu]rā inclinat
 in d[ist]inctū t[ame]n sit q[uod] n[atu]rā nisi obtemperet sensus, intellectus ut subditus d[ist]incto suo, ut idē p[er] h[ec]
 p[ri]mo politice. Est eni[m] h[ec] genus duelli inhibiti uita n[atu]rā ut sumit p[ri]ncipal[iter] intelligentia,
 quod idē est, quod me gentiū. h[ec] p[ro]bat[ur] sic. nam ex n[atu]rā intelligentia, p[er]dit, inspirat
 eis et n[atu]rā, equitas, disponens, in q[uod]uā d[ist]inctū d[ist]inctū et m[od]o h[uius] certū me positū ymo ut
 uerius loquar, sint ip[s]a met equitas uita, n[atu]rā, aliquo addito ul detracto ut. l. me cuius
 p[er] de iust. et iur. Cum igitur, h[ec] n[atu]rā, equitas tendat, in q[uod]uā d[ist]inctū unius, ergo rep[er]at
 ho[m]ines extirpatione[m] que est tendens, ad mundi destructione[m], et d[icit] de extirpatione tendente,
 ad mundi destructione[m] nam quedam quorundam ho[m]inum extirpatione[m], tendit ad mundi q[uod]uāq[ue]
 ut puta cū mali extirpant[ur], nā p[er] hoc interest rei publice, ut p[er]uaneat, ut p[er] de publi.
 et d[icit]. l. h[ec]atio. p[er] ad. l. d[ist]inct. l. ita vulneratus, in fi. p[er] de p[er]d[itu]s. l. si aro, de ser. et p[er].
 ut fame. Ex h[uius] apte q[uod]cludit[ur], qualis h[ec] genus duelli est inhibiti uita diuina/ uita
 gentiū/ Canonico/ et Cuius.

(de motu.

1. act^2 aggrdnd.

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✓ verbalis

4.8

Cumque oporet possit ad impediendum ne resalie indicantur. Et si queritur quis parere possit ad impediendum ne iudicetur de test. & boniens. de re iud. c. cu sup. Interest autem ipse qui indicatur ut sic hinc mandatum admittatur et quilibet de populo sine mandato admittatur per cuiuslibet interest. ff. de no. op. nu. §. in punitali §. f. admittunt etiam illi qui sunt de populo indicantis quia interest ne iniuste indicentur ne eodem iure utantur qui eos ff. q. quis. uis. in rudib. 2. p. totum. n. g. r.

Qualiter ostenditur de iustitia p[ro]p[ri]a ul' ex d[e]negata, ul' ex d[e]negata, s[ed] p[er] acta p[ri]m[u]m iudicis,
Quarto queritur qualiter ostenditur de iustitia p[ro]p[ri]a ul' p[er] testes, et requiritur p[ri]m[u]m iudex
ut fiat copia actoris et fidei fiat, hoc est iustitia facere, ut p[er] y. c. ut h. pen.

¶ In aliqua capiant vigore repfaliar. Deponeri ualeant ut ex pmo dicto, an sed effe-
cuntur querunt an si aliqua capiantur, vigore repfaliar. Deponeri ualeant ut ex pmo dicto,
an ex pmo. Et si indico sunt repfale, pte acata et opente, et facta sunt pphra sua, tunc ea de-
trahuntur, ex ea indico ut ff de re. iudi. l. admo pro. Etiam no opent, tunc pmo debet pccnia
ut capiat ex pmo dicto, ut affectus totis ueniat, et signum p seuerant tunc debet pccnia
deponendi ex pmo dicto.

De forma expendi representat.

Respice uideri de forma extendi representas, indicas, et oculis hoc querit de plurib;
an liceat illi cui sunt gresse repulsiu aucto ppa, ul p ministros, quidam, cape hoies in quos
inducitur, qd an liceat, illi cui sunt gresse, repulsiu aucto ppa, ul p ministros, cape hoies
Et pmo, q quos inducitur, Co. 1a. de del. tener q no licet, aucto ppa, cape psonas, nec res,
s; iudiciaria, ut l. miles. ff. de re. iud. supplem quidem ha uerum, ppter hoc copia, iudic.
il aucto ppa recedit, ff. que in sen. rec. l. aut pto, l. si debitor, Et de decur. l. guali. Et ha
puto uerum ponderari in d. modis facultatis, gresse, et ille suandus, de ppo. c. dilecti,
et l. diligens ff. man.

In psona et res, cupiens, tenet cupiens, psonare iudicium nisi sibi remittere, iudicium
 eo queritur in psona cupiens, et res tenetur cupiens psonare iudicium an possit remittere
 sibi. de la. de bel. tenet, queritur psonare iudicium p. f. no est singularis, p. de res. ult. no
 hant illate querens. ut p. illius, p. de off. p. f. illi dicitur hoc p. de res. in p. f. cupiens.

capte in qua captus fuit. Et videtur qd sic p totu. ti. quod quis iur. ff. Contrarium est uer-
nam tenetur quod quis iur. uendicat sibi locu. in iuris. executio. Et summa. ciuitas. idcirco
repsalias. iuste qd aliam hoc idem lz alij qd pma. no aut loquit in executioe facti ut si
spoliari te liceat tibi spoliare me. qd sic pmitteret vindicta. qd id. ff. ad l. ad quib. l. sciam
q. qui cu alio. Venerat ergo ad ciuitate sua et petat repsalias qd illam ciuitate in
qua captus fuit.

fr. viij. pr.

An p statutu repsalie qcedi possint in ciuib. al iur. coi no pmissis
Quarto qd an p statutu repsalie qcedi possint in ciuib. al no pmissis aut coi. (So. ciuitas
q terras plene subditas. qcedere pot ead in ciuib. no pmissis. lege coi. si in terras libera. ul
cia qfederatas. de quib. loquit. l. no dubito. ff. de cap. no pot qd. na in cessioe repsalias uertit
in cie qgnitoe. de iusticia fia ul iusticia denegata. et in hac una ciuitas. no pot statueret
q alia. qd par. in parte. qd. l. qd. dicitur. an hui possit copia. supioris. denegantis iusticia
facere. et de hoc nichil pot una ciuitas. q alia statueret. nam no posset statueret. qm
dicantur. repsalie. no requiritur supioris. denegantis iusticia. na hoc est tollere. inef-
ficiam supioris. de iur. iur. dementes. Cetero requiritur auctas supioris. indicantis. et
ipa no regnoscens. supioris est illa. cui auctas requiritur. et de hoc statueret. pot ciuitas.
qca no requisita. et q iuris. p duto alterius. capiat. et de coi. agros. de pto. l. si. l. p. p. sicut
statuit in ciuib. qd pot. p duto iuri. teneat. et qui mo. p. qd. l. satis. et filius p parte.
ut et de pmpri. l. si. l. p.

An statutu ciuitatis quo canetur. qd filius. teneat p pte delinquentis possit excoi q
filii existens in excoi. ciuitatis qcedens. filius. teneatur. p pte delinquentis

Quinto qd an statutu ciuitatis. quo qd. canet. qd possit excoi qd filii existens. excoi
territorii ciuitatis qcedens. (So. aut filius. erat huius. pte delicti qmissi. aprie et tuc
aut qd nunquid fieri possit excoi. statutu qd filii alibi existens. et no pot. ut. l. a
duo. pte. q. p. ff. de re. iudi. et l. ciuis. iuris. q. ci. re. ff. de bo. auc. iudi. p. aut
qd nunquid qcedat ex illo statutu agi possit. qd cu et pot qd actio. ipm sequit au opert.
et de lon. tem. pscip. l. si. hoc f. uera. nisi filius. an delictu. qmissum. qmissum alibi domi
alium. ul mde foret rae antiquae origine. qd tuc illa ciuitas. ut pueniens. posset illu
deffendere ab illo statutu. (Et aut filius. natus. sit pte qmissum. delictu. tuc no agit
q illu na statutu intelligitur. de filio. tuc hinc. ff. de no. p. l. mactans. q. si excoi.
ff. de mil. re. l. sitiens. Idem dico statutu. h. qd unus. de ulla. teneat p duto alterius
effectus. denovo ho illius. no mde. p duto. antiquis. ut. et de duto. l. puidendi. et. no.
dy. in l. incola. ff. ad munu.

An p pte hanc fieri possit. ut unus. pallio teneat. pallio. So. p pte puatore ex
de pto qd an p pte possit fieri. hanc ut unus. teneat. pressum no. in aut. ut. no
fiant pigno. ead si pascat q exigit alius. in quo h. mo. ut. et no filius.
p. p. totu. et h. hoc no possit dno. iuxta in dno potest facere cap. hoies sic qd dicitur.
de bello. p. aul. quod. sit ad purgationem quod duellum nuncupatur.

(de duello. usq. ad finem.)

Restat nunc mde de duello. Inanis tractatu pmo queram. quid sit duellum. Et
quot sint spes duelli. Cetero que iure sit pmissum. et quo inhibiti. Quarto
p quid sit pmissum et p quid inhibiti. Quinto p quib. ciuib. hanc sit duellu.
Secundo inter quos sit hanc. Cetero qualis duellandum.

Quid sit duellum. est. pugna corporalis. deliberata. hinc mde. duos ad purga-
tionem. p. p. dico qd duellum. tem. gloria. ul ody. exagratem. Dico. pugna. hoc ponit
ut genus. Dico. deliberata. hinc mde. hoc p. n. ad differetia. pugne. que. sit ad ne-
cessaria. defensam. sin. de qua. m. l. ut. iur. p. de. iust. et. iur. et. l. r. et. un. ut. et. l. r. q. dim.
di. p. de. di. et. di. ar. et. l. p. am. q. qui. cu. alio. ff. ad. l. ad. quib. et. c. olim. i. de. resti. spo.
et. elem. si. furiosus. de. homi. nam. in. pugna. illa. no. est. deliberata. ex. pte. ad. gressu. requi-
situs. p. ex. pte. ad. gressu. in. ul. neutrum. ut. pbat. in. da. dem. si. furiosus. In. duello.
aut. est. uerum. qd. deliberata. Dico. duos. qd. tuc. p. pte. duellu. nuncupatur. ad. h. e. et. h. mo.
logie. uocabuli. in. p. de. donat. q. est. et. all. ind. l. q. r. si. cupio. xij. di. clerus. de. pben. tu.
secundum. pugna. duos. ad. differetia. q. tui. qui. inter. duos. celebratur. ex. mutuo. pau-
sensu. ut. in. p. de. obligatoib. cu. p. r. se. quentib. Et. dico. corporalis. ad. differetia. pugne.
iudicarie. que. sit. ead. m. duos. ut. pte. actoris. et. rei. ut. l. r. no. noui. q. p. p. t. om.
et. de. iudi. et. l. p. p. erandum. et. et. c. forus. de. vbo. si. nam. ibi. no. q. tendit. di. uis. corpis.

etymologus uocabli.

si uerbis ut uerbis statim allegatis. dicitur ad purgationem gloria uel ad exaggerationem. nam per hoc tangitur finis et elicitur. species duelli ut infra sequitur. Concluditur igitur descriptio duelli in genere per supra dicta.

Quot sint species duelli. Quod duellum ut est descriptum sumit generaliter. et ut tungi in fine. Descriptio species duelli elicitur. per uerba posita infra. nam tres sunt species duelli. scilicet cum duellum aut per odium exaggerationem aut per gloriam in publico sequendam ex uerbis corporeis aut per purgationem alicuius criminis iuncta.

Qualiter duellum fit per odium exaggerationem. solo odio originali naturali et naturalitate fit. propter igitur exaggerationem fit cum aliquo gulari que apud naturales forma specifica appellatur. inducitur ad se iunctum ex terminando. et de hoc duello non repro aliquod uere tantum. sed ex principio naturalibus hoc tenetur ut statim persequatur. et per sensualem experientiam hoc est approbatum.

(for specifica)

Qualiter duellum fit per gloriam in publico sequendam. Et fit et per gloriam in publico sequendam ut in publicis corporibus. variis modis expunt. et de hoc repro uere tantum et cum. et canonico. lege tantum. ut l. hac actio. si quis in colutatio. ff. ad l. ad quilibet. et l. una. c. de glia. tol. h. p. c. de re iudi. l. quomodo. ff. de his qui. no. in fa. l. actore. c. de actore. l. i. c. que res. p. ob. p. l. spe. ff. de donat. l. donat. no. glo. in fa. de heredi. que ab. inter. d. ff. interdu. lege canonica. de cle. pu. indu. l. etia ibi fiat per purgationem. de corne. p. totu. l. non fit prope duellum si panera cum. ut l. hac actio. si quis in colutatio. ff. ad l. ad quilibet.

Qualiter duellum fit per purgationem alicuius criminis iuncta. Et fit et tercio. per purgationem. si cum aliquo committit alicui inponit. forte carens aliis prohibitis ut etia non carens offert se. probatur uerbis corporeis. duello suscepto. et provocatus sic se purgat. et de hoc dicitur. etia uere tantum. de pu. in duell. ut d. allegatur. de pur. bul. proxi. in q. d. q. proxi. illam quam et in lombard. ut. i. persequatur. cum illud membrum distat.

Quo uere fit permissum et quo inhibitu duellum.

Infra terminum uel quomodo uere fit introductu duellum. expedit singulas species duelli supra positas explicare declarando circa singulas quo uere inducuntur. et quo inhibentur. Et primo de duello pueriente per hodie naturalis exaggerationem. ubi sciendum quod hoc duellum introductu est uere naturali ut sumitur. uere naturale per instinctu nature. pueriente et per sensualitate. ad aliquid appetendum ut sumitur in se suo significato. ut no. glo. i. d. uere naturale. et l. i. g. uere aut naturale. ff. de in fa. i. uere. Et ipso duellum est inhibitu uere naturali ut sumitur uere naturale per instinctu ne pueriente et rationabili intelligentia. que appellatur naturale ex parte. Et est terminus modus uere naturalis ut d. c. uere naturale. Est etia inhibitu uere naturali tenente precepta moralia. leges diuine. ut dicitur. quarto modo ut. c. statim allegato. Est etia inhibitu hoc duellum uere posiuo. scilicet canonico et civili. Expedit etiam singula demonstrare.

Qualiter duellum quod fit per odium exaggerationem fit introductu uere naturali sumpto per instinctu ne pueriente ex sensualitate. ad aliquid appetendum.

Dicitur quod hoc duellum est introductu uere naturali. ut sumitur. per instinctu nature. pueriente ex sensualitate ad aliquid appetendum. hoc sic demonstratur. quidquid est productum causa immediata. alicuius effectus. persequens. est productum illius effectus. si quid uere naturale originali inclinatio ad se appetendum est causa motus. huius sensualitatis. appetitus. ad duellandum ergo est causa duelli. inducitur in effectum. ff. ad l. cor. de sic l. nichil. c. c. n. l. si quis ueniendi. l. d. si deat. et c. si quis a principio naturalibus et superioribus et inferioribus puerit in hodie varia appetitus. inclinatio. nam et ex naturali dispositio quies. circumspecto accidentali quocumque. diligit et odit. quilibet hoc ex momento. naturalis hanc uniformem. correspondentiam figuratam celestis. et prima paterna. conformem. inplexione paulatim sunt amassim naturalis. sic prepuerit. hinc inde sunt. minimissim. nam ab uniformi causa dicitur insurgere uniformis effectus. c. ad l. fil. l. ult. ff. ad l. ad quilibet. l. illud. ff. de font. l. i. de q. p. traslato. et c. in cor. paralia. de traslat. pecla. Et in est hoc attendendum. quod hoc inimicitia naturalis in hodie et hodie ut predictum puerit ex singulari naturali dispositio. que forma specifica apud naturales nuncupatur. nam acuta naturali dispositio spiritus humane in hodie. dicitur et amicitia per uniformem.

(for specifica)

tatem. qplexionis relate ad formā humanā, et p ea dicitur uita q mē hōiem et hōiem est offi-
humanitatis sine mē, impendendum. ut. l. si fūne inf. p. de fūne, expor. et l. officio. c. de ne.
te. et ibi glō. et sic nō infirmitas, hāc ex nālī dispositōe, sicut q hāc nālī nō est repree fignis
reuerat p spēs singulas, dūalium. Nam int. singulas spēs brutorū est quoddam fedus
mūctōis, et cohabitatio p dūiformitatem qplexionis relate ad formā specifiā, sicut inter
spēm et spēm quāq. est extremū repugnantie, inductorū ad alterius extirpationem. ut est i
anapitex et aūth aucupabilib. muvaloga et muuila/auib. et leporib./et sic de singulis p
uenit. igitur, hāc ex quadam repugnantie individuali dispositōe, pnapioze supior et inf
rior. effectū quilibz in se experitur. Illa tñ dispositio nō inducit regularit. immediate ducl-
lum, si p medice actus, ad quos pperit puenit. s. tñ cred q tanta poss. ē repugnantia indivi-
dualis dispositōis q subito ad d puenit, et hāc puenit cū uenit, sola sensualitate,
et nullo rōis dūbramine. Ex hys appet qclusim quālē hāc duellū introductū est, uice nō
sic supio.

Qualit. duellum quod fit p ody exaggeratōem fit inhibiti uice nālī supio p uicabili
intelligentia, et uice diuino/Canonico/et Cūli. Deum. dicebam enī q hāc erat inhibiti
Testat uideret quod dicebam fo. circa hāc men. uice nālī supio p uicabili intelli-
gentia, et sic uice gentiū et uice nālī put qmter pcepta moralia legē diuine, et uice cano-
nico et cūli. hāc licet clarius demonstrari pōt inapiendo a lege diuina (nam hāc est unū
de pceptis decalogi. nō accidet, et sic lege diuina inhibiti, et hāc est regularit. pceptū
et si datur instantia, de repte, quē accidet filiā, nec tñ potuit, lege diuina. Iudici. l. c.
xxij. q. iij. dūisquisq. xxij. q. d. si nō licet, et de eanson qui multat, et sic accidet, iudici
xvi. c. xxij. q. d. si nō licet, nō ob. q. d. fca fuerūt spēs sū inducūt. ut scribit augustinus
in. li. p. de ciuitate dei, tñ supior, hāc m. c. si nō licet. xxij. q. d. sic igitur, lege diuina
inhibiti est, p illud pceptū nō accidet, de uero nom. d. c. (Est etiā inhibiti lege canonica,
de homia. solū. l. dūis. q. p totū, xxij. q. d. si nō licet. (Est etiā inhibiti uice cūli, ff. ad
l. cor. de sic. et c. p totū. Et si dicit illa uice inhibent homiadū uolūtariū, et sic hāc
genus duelli ex quo illud puenit, s. homiadū puenies aducllo, introducto ex nālī dis-
positōe, nō est uolūtariū, ex quo nālī est introductū. ergo illa uice nō assequit hūc
causā. fo. est pempta, nā hāc nālī dispositio corporea, hāc introducta tñ nālī intelligentie
dicatne dūis. in qm, cū obtemperandum ē, nam illa nālī dispositio nō necessitat, ymo manet
liberū arbitriū. xxij. q. iij. de tēpō. et c. nabucodonosor, et c. p totū. et de penit. d. 4. et
p. 3. c. cū corp. ymo et astrologi hāc efficacius demonstrantes, hāc idē assunt, dūe inquit
tholomeus, in Centiloquio in lib. dūmo. dūa sapientie dūatur assequi, sic igitur, hāc dispositio cor-
porea, puenit a nālī principio, tñ nālī intelligentia manet, et in qm dūis. sic dūa
pōset de singulis grūb. dūiorū moralū, nam nālī singuli hōies, ad singula inclinat
dūa. De quidam supbi, quidam luxuriosi, quidam auari, et sic de singulis, nec tñ excusant
q pāse nō necessitant, ut c. nabucodonosor, xxij. q. iij. hūc est quod dicit p. 3. de aīa
tractatu. De motu quod mē apertū sensitiuū et intellectualem est quāq. repugnantia, nam
sensitiuus tendit in dūū, intellectus in aliū, et si intellectus dūat sensum motus est
rationalis et nālī, sicut si spera supior, moueat inferiōre, et dūc q fiat, motus, est q
natura ac si spera inferior, moueat supiorē, l. cū motus sensus, puenit a nālī inclinād.
in dūū tñ sit q nām nisi obtemper. sensus, intellectu ut subditus dūo suo, ut idē p. 3.
p. mo pollice. (Est etiā hāc genus duelli inhibiti uice nālī ut sumit p nālī intelligentia,
quod idē est, quod uice gentiū. hāc pbat, sic. Nam ex nālī intelligentia, pedit, infirmitas
cōis et nālī, equitas, disponens, in qsuatōem dūis, et inde hūc extū uis positū, ymo ut
uerus loquar, sunt ipā met equitas uice, nālī, aliquo addito ul detracto, ut. l. uice cūli,
p. de iust. et iur. Cum igitur, hāc nālī, equitas tendat, in qsuatōem unūsi, ergo repbat
hōis extirpationem, que est tendens, ad mundi destructionem, et dūo de extirpatione tendente,
ad mundi destructionem, nam quedam quorūdam hōiū extirpationes, tendit ad mundi qsuatōem,
ut puta cū mali extirpantur, nā p hāc interest rei publice, ut puruant, ut ff. de publi.
et dūm. l. p. latatio. p. ad t. dūp. l. i. in uulneratō. inf. p. de p. dūm. l. si arto, de sen. et p.
ut fame, et hys, appet qcludunt, quālē hāc genus duelli est inhibiti uice diuino/ uice
gentiū/Canonico/et Cūli.

De motu.

de iusta et iure. l. i. §. me nalis. et. l. ex hoc iure ff. e. t. probat minor. Nam hoc genus duellandi
tendit in destructionem et exterminationem hoīs qui est nobilissima p^e vniū. ymo est p^o p^oducto
ff. de iuris. l. in peccatum. §. inhibiti iure gentiū. Confirmat ille actus est inhibitiū iur^e ge
tū qui est repugnans p^oceptis nalis equitatis. que est apm ius gentiū ul ipius fundamentū
hoc genus duellandi est humisimū/ ergo et c. maior p^obat^r nā omē illud est iur^e gentiū
inhibitiū cui q^uā est p^oceptum. cū q^uā sit eadē disciplina. ff. de hys qui sūt sui. ul al.
iur^e l. i. iust. e. a. in p^o n. xxxi. di. hospitallū. p^obat^r minor. nam h^o est unū d^oceptis
iuris gentiū. q^u quē nō locupletentur. cū aliena iactura. ut. l. nā h^o. ff. de q^udi. iudici.
et. regula locupletentur d^o reg. iur^e l. i. d. h^o cā est unū p^oceptū iuris gentiū/ quod nō
nō ius fieri alteri nō facias. ut in p^o n. decretor. §. hoc genus duellandi repugnat utriq^{ue}
p^ocepto. Et p^o p^omo p^ocepto nā duellans. querit gloriā d^o vitupio soti et p^o p^omi etiam
sibi fieri h^o nollet ergo inhibitiū iur^e gentiū/ Confirmat ille actus est inhibitiū iur^e
gentiū qui est p^oceptū belli iusta. hoc genus duellandi est humisimū ergo. probat^r maio
nā bellum iustum solum est introductū iur^e/ ut. l. ex hoc iur^e ff. de iust. et iur^e/ et. l. hostes.
ff. de cap. et post. v^o. q^uā maior patet/ nā h^o nō est indiciū auct^o p^onapie. nec p^o necēss
defensam/ §. de hys inferat^r hoc genus duellandi inhibitiū iur^e gentiū/ Et statim p^odis
opponitur sic. hoc genus duellandi fit p^o experientia fortitudinis. que fortitudo est virtus
moralis. ymo et cardinalis/ §. virtutes morales. nec eaz^u e^odicia sunt inhibitiū iur^e gentiū
ergo nō p^ocedit statū allegata/ Et aut^{em} h^oic sunt actus vere fortitudinis. que est virtus mo
ralis patet. nam in h^oic g^one duellandi fit expectatio et aggressus. (Et p^ovidentia hui^{us} q^u
est attendendum p^oceptum/ fortitudo/ uera que est virtus moralis. et cardinalis. et illa
nec eius opatio sunt inhibitiū iur^e gentiū. sunt cā fortitudines similitudinarie. d^o q^u +
p^o h^oic. m. ethy. tractatu de fortitudine. que similitudinarie. p^ociapant actus. adgrediendi
et expectandi/ et sūt. d. nā aliqui adgrediuntur. p^o timorē p^onci. fugientes de bello p^o
nūntur/ Quidam adgrediuntur p^o experientia auct^o bellandi ut stipendarij et isti ut facili^{ter}
adgrediuntur sic facili^{ter} fugiūt. ut inquit p^o h^oic. ubi d. Quidam adgrediuntur p^o ira nō deli
berantes p^ociulum/ Quidam adgrediunt^r p^o spem nō credentes subesse p^ociulum nec al. ad
gressus. si existimaret subesse p^ociulum/ Quidam adgrediuntur p^o gloriā mundi q^u sequendam
q^u fortes laudari solent timidi aut vitupari. Iste sunt d. fortitudines similitudinarie
ad uerā fortitudinē que est uera virtus moralis. et cardinalis. existit. ad h^oic aut^{em} q^u sit uā
fortitudo. requiruntur. h^oic q^u d^octores. vidēz q^u opetur. que sciēt. nam opus memoratu nō
est opus virtutis. quia prudentia d^o regulare omē opus virtutis. p^o requirit^r q^u elige
Certe requirit^r q^u eligat p^o h^oic. i. p^o bonitate et honestate opus iuste. nō aut^{em} p^o aliquod
extrinsecum. Quarto requirit^r q^u opetur. firmū et delectabile. Omne similitudinarie de
quib^{us} sup^o deficiūt p^o p^o plus et minus. ad uerā omne t^o deficiūt in h^oic. q^u opantes. p^o illas
nō opantur. p^o se. i. p^o bonitate et honestate opus. Sic opposito ista opantes. adgrediendo
et expectando. in h^oic g^one duelli h^oic faciūt p^o gloriā nō aut^{em} p^o bonitate et honestate act^u
in se. nec cā h^oic opantur. cura quod debent. h^oic colligunt^r ex hys que tractat p^o h^oic. m. ethy.
tractatu de fortitudine. Exp^odis igit^r inferat^r hoc genus duellandi inhibitiū iur^e gentiū

¶ Quate duellum quod sit p[ro]p[ri]am inhibitu[m] sit iure canonico et civili

Hic dicitur de duelli genere inhibiti iuxta canonicos et civilem. Iure canonico est clare cum immixtione quo ad prohibitionem et permissionem tractantes leges diuine qua hoc duellum est inhibiti ut supradeductum est probat etiam rubricam et nigrum de pugnantibus in duello. Et ibi ponatur clerici quia idem in omnibus melius probat. Item de torneamentis ubi decidentibus in torneamentis denegetur sepultura hoc ergo clarum est deinde civiliter sit inhibiti hoc aliquantulum est infirmandum quia lege ueteri ff. de iure promissum genus hoc duelli probat rex ff. ad l. adiungit l. si huius actio § si quis in collocatione sive in parricidio ubi apparet cessare actionem penultio extra accidentem in hoc duello ubi pugilates collocantur. Et noua addas unde inhibiti ut probat rex c. de gladii l. una li. xi. Quid ergo dicimus dicimus ne lege ueteri esse corrupta per noua ut si non est nouum ff. de legibus sic puro attendendum quod potest fieri pugna non eruentur ubi non tendit ad sanguinis effusionem ut cum aliqui brachys collocantur nil similibus modis et hoc genus collocandi non reprobatur inhibiti unde civili nec veteri nec nouo. Immo unde nouo promittitur specula per ipsam recitationem ut c. de speciebus per totum item excepta l. si ferientes li. xi. et c. de expe.

Ricordo che è opportuno. Ma oppo
 nuto è opportuno.

si obsequantia est mandata a lege positiva, ergo obsequantia exclusio est inhibita. Ut si autem oppositum in
positum ut oppositum in oppositum, ff. de hys, qui sunt sui vel al. lib. l. i. in p. e. n. in p. xxv. di. qo
fortissimum. pbatu: minor, nam iure positivo introducto sunt actus tam civiles, q. criminales. et
tota forma iudicaria p qua procedunt, ad iura pui declaranda. ut. l. pperandum. c. de iudi. aut
offeratur, et. l. vna. c. de lit. qf. et. l. p lata. c. de snp. 7 inter. o. in et c. qm q. d. pbat. de
vnicuq. vobatur quod sui est. xi. q. i. cu duobus. et. l. iustas ff. de iust. et iur. et. r.
iustas Insti. e. n. ex duelland hoc obsequantia. penitus excluditur, ergo hoc duellu est iure po
sitivo inhibitu. Confirmat. q. hic actus est iure positivo inhibitus, p que pab. iustas dene
gatur, si hoc duellu est humer, ergo, pbatu: maior, quia ad hunc fine pmlantia fine
iura positiva diuinitus p ora pnapii. ut. l. ult. c. de lon. tem. pscip. vii. di. qis iure. xvi.
q. i. placuit, pbatu: minor, nam p hoc duellu aliqui qungit innocente subumbere, r. duellu
et sic sibi imbia irrogari, et aliquado qungit nocente obanere, et sic no sic iustas puaat.
Ex hys inferur, hoc genus duelli quod sit p puegationem et crimine inpetitum fore iustis
iure positivo Canonico indifanere. Cuius regulare.

¶ Quare duellum pugnandi inter cunctos regulatur sit inhibiti-
 ¶ Dixi eas regulariter inter cunctos inhibendum hoc duellum fallit
 et eius violatoribus. Or puta si quis inter ipsa pace hominem occiderit: et qstet de homicidio pu-
 nitur, pena capitali ut fractor, paco, nisi p duellu pbarre uoluit q hoc fecit se defendendo
 et est ille spalis causis quo duellum est in optione rei. Alter, casus finitua' ipia pace uul-
 nerauit punietur, nisi pbarre uoluit q hoc fecerit se defendendo, hi duo casus hantur de
 pace tenent et eius viola. l. vna. pmuo, in §. si quis hominem infra pace. Sui, in §. si quis
 alium in eadem. l. In alijs aut casib' pmitit' iure Lombardico ut infra psequar. Ex his q
 clauduntur, tertiu' principale membru' hui' tractatus, s quo me' sit duellum in iudicio, et q
 inhibitiu', distinguendo singulas ptes duelli. per predicta igitur, patet explicatio quarti
 membri videli' p quid inhibitiu' et p quid pmissum. Nam duellum pmiu' omi' iure est in-
 hibitiu' et nullo pmissum et p quid sup' appuit, sic de po. et sic de tercio, singula tracta-
 singulis membris ad ha' ppositu' reducendo.

In quibz casibz duellum pugnatorum pmutatur pmutatur duellu est videndum. De
 circa quintum pmutale videlicet in quibz casibz pma spc dñi est gnullu cau. De fa
 specto dñi est quat. De tertia spc tñc videndum Cum illa uve lombard pluribz
 casibz pmutatur. Et plun circa tertia spm misistendum usq ad finē tractatus.

Qualis duellum purgatoriu iure lombard. in xx. capit. pmititur. supra notatos. Qucendum est igitur quib. caus. hoc duellum pmitatur. ultra duos. hntur in l. fcl. tra. de pa. te. et ei. mo. eo pmititur duellu in crimine. legio ubi maiestate. cu quis aliu impet. supillo cernit. ut in lombard. de public. crimib. l. si quis. et e. ultima. sic fo. am. de au. uxore asiliata in morte vi. de in lom. de qsalio moras l. si mulier. p. ult. Sic et tercio in iniuria q.urbuatois. de si quis aliquis uocauit q.urbuatum ut. in lom. de q.urbis. l. si quis alliu. Sic et quarto cau. de homicidio q. misso. intera tcecuquam ut. in lom. de homic. l. qui. intera tcecuqua. Sic quinto p. homicidio q. misso in absconso. ut in lom. de homic. l. liber homo. Sic sexto in crimine patricidij. p. dicat q. missum p. cupiditate. Vncq. ipius. ut in lom. de patricia. l. ult. in fi. Sic septimo de fureto q. misso a suo. fidiu negaret suum suu fuisse furtu. ut in lom. de fureto. l. si quis alliu. et fuit lex qualcosiana. p. m. quosdam. Sic octauo. in crimine adulteri. de si quis acisetur. adulterast uxore alterius. ut. in lom. de adult. l. m. Sic nono. si quis dicat aliqua muliere adulterata. et sic p. bare uelit. ut in lom. de iur. mul. l. y. mapit si quis. puellam. Sic ^{de amo} ^{tercio} si quis fident. que malo ordine posse disse re mobilem sue immobilem. xxx. anno. ut in lom. de prescript. l. si quis alliu. Sic vndecimo in q.urbuatois testis. ut in lom. de testi. l. si quis. cu altero. quod p. dicit si produ. cant. ab utraq. pte. si aut ab eadem pte. no. sic duellum. na. aut actor. p. bat et q. d. p. nat. reus. aut nichil p. bat. et absoluitur. reus. ex si ab utraq. pte. p. dicantur. et cetera sic paria. tunc sic duellum. Sic xij. p. debitu paternu q. filiu negant. ut. in lom. qualis. p. se defendat. et in qui. capi. p. pugna p. h. ul. fieri debeat. l. si quis. post morte. Et uerub. intellectus illius. l. est. q. intelligatur. debitu ex maleficio. Sic xlii. si p. mandu si agatur q. malefactoru. ut in lom. qualis. que. se defen. et e. l. si quis alliu. no. aut sic si agatur q. q. saluatore. ut in lom. de q. salis illiatis. l. una in fi. Sic xliij. p. adulterio. de si

fit. nunc dicit suspicio; q̄m̄isio; primo cū dicitur iurare v̄ ita ē. p̄o cū dicitur iurare q̄m̄isio
 ē suspicio; et cū puocat v̄e suspicio; debet addere; cū suspicio; v̄ pote q̄ ip̄m̄ iudicat
 loqui cū uoce sua; et sic de alijs; et autē puocat; ad duellum in t̄a alleana; .i. nō q̄ aliquid
 omissum ē; s; q̄ aliquid v̄ pote cū puocat; sup̄ comune lese maiestatis; tūc cū accedit ut
 testis dicitur sic ē ut p̄statutur iuramentū testis; ut ē de testi l. i. ubi iurandi. de testi. c. nūc
 et c. cū nūc; cū similib; et sic dicit magis; ut iuret v̄ sic nō esse; h̄ec optimo quo ad sa
 cramentū rei reprobatū; ut sup̄ prima; Tercia fuit optimo et fertur fuisse papiensium
 videt; q̄ ex p̄te rei et puocati nullū p̄statutur debet iuramentū. s; ex p̄te actoris; de actore
 p̄batur; in lombarda; quali; q̄m̄; se de p̄n. d. l. si quis asto. de uco p̄bant; nā reus tenebat
 ad alterū duos il pugnaret il p̄uenit q̄d p̄net; sic igitur iuramentū p̄ p̄te rei nihil op̄at
 et sic ut sup̄ illū respiciendum. l. ampliore. q̄ iuramentū; et ap. l. nō cogendi. q̄. fabi.
 p̄ de p̄u. Quarta fuit op̄. et fuit eūdem alibi; qui uoluit dicere; q̄ actor; semp̄ iurat
 p̄ter q̄ in comune lese maiestatis; et testib; q̄m̄is; et iuramentū p̄cedit; in reo occidit cū
 alijs p̄terq̄ cū papiensibus; et sic credi in actore nō q̄ regulariter p̄stat; p̄ q̄ in casibus
 de quib; supra; Et est v̄o ut p̄ appellatur; reus se p̄iurare; nō p̄cedente aliquo iudicio q̄m̄
 ymo uoluit iura ad minus; p̄cedere infamia et defficiendi p̄latorib; exponit p̄iuratiō. de
 p̄ur. ca. p̄ totū. q̄. q̄. m̄. p̄ totū. de acq̄. qualib; .q̄. et ibi nō. Sic igitur; iure lombardo quo
 duellum p̄mittitur; in casib; sup̄ enūmeratis; ad minus ex p̄te actoris; p̄cedat iuramentū
 et iuramentū dicitur q̄ forme; puocati. d. puocat; de rei existentia; sic iuret; si dicit suspicio sic
 etiā iuret; v̄ etiā differentia notat; me iuramentū calūpnie; et de iuramento; ut dñi d. credidit
 tate aliud d. ueritate; ut dixit dñs karolus; In re aut nō capio eam necessitatis iura
 menti;

¶ In vna parti dato campione, in caub; aure pmissis, licet sit alteri pti dare campione
 ¶ Et quero nūquid si aliam pti datur campio, in caub; pmissis, a iure lombardo quā sit vin-
 ut sup; notauit an tūc liceat alteri pti dare campione. Et sic fuerūt opinionēs dante, aliqui
 dicūt qd sic allegant quod hētur in lom. quālibet quis se defen. l. quicūq; fallit; in caū ubi fuit
 ostendit qd dūm, ea sūt opinio qd alteri pti nō liceat, tūc et est vō nam lex tūc in tribus
 caub; pmitit; ergo dēneat si in alijs. ut ff. d. lēp. l. ius singulare; ff. ad municip. l. i. ff. so-
 ma. l. fici dōt; c. de pōr. l. maritis; d. tūstāt p̄latores. l. int' corporalia, cū similib; Ego
 credo sic ponderandum qd in hoc refert hoc iudiciū duellū audito q̄tentioso, nam in iudicio
 q̄tentioso regularit' quis p̄allū lingue et p̄ hoc inuictus, q̄ p̄uatores vsus, ut ff. d. p̄uāt.
 l. i. et l. vsus; si in duello regularit' sōlū p̄ se, et in hoc equipatur iudicio criminali in quō
 nō interueniūt p̄uatores, ad cās cū allegandus, ff. d. pub. iud. l. p. q. qui ad crimē, et l. p̄uāt
 quoz; q. publicē, ff. d. p̄uāt, et c. h. et c. veniens, d. accusat; et est vō qd in p̄sona p̄uatores
 nō pōt fieri s̄cia q̄d p̄natoria, qd innocētie, in p̄sona dñi nō, qd absens ff. d. p̄uāt. l. ab-
 sentem, sic directo in duello, nam in duello duellantēs, ad p̄uatores p̄sonas tendūt ut explic-
 ellidatur vtriusq; p̄ hoc genus p̄batois et sic regularit' nō intēuēt campio. p̄ter qd in
 caub; pmissis, En igitur, emergat caus dandi campione, ex pte vnius, et nō emergat ex
 pte alterius, ille solus dabit campione En aut utriq; emergat, caus vtriusq; dabit, in iudicio
 qd equalitate hinc inde suandam, Et licet uni, det alter, ut l. terminato c. d. fuit et l. i.
 ex demutue, p̄f. c. v. et p. totū. ti. Regula nō licet d. res nūc, l. v. Et hoc sapit equitate
 si p̄us dñi utriusq; de rigore iuris;

Qualis in cubiliis sine inde eis quod datur, campio fiet ipso dato et gressio, de hoc pondero.
Tercio quero, qualis in cubiliis sine inde eis quod datur, campio fiet ipso dato et gressio. Co-
sic pondero q sicut in foro et tentorio, in poratur, sic p campione, in iudicio duellari. et
e deposuit, sic ubi sine inde, fit campionum gressio de fieri ipso equa distributio. In pnapas
Abz aut duellantibz no est ponderanda equalitas ul inaequalitas. cum am ppam pperit
viri corpore sponte ad potu pducit.

¶ In quilibet admittitur p[ro] campione. ¶ p[ro] campione. Et ut dñi est h[ic] equipatur. cum
Quarto quere in quilibet admittitur. p[ro] advocato. sicut exp[er]it. quilibet admittit ad p[ro]
fulandam nisi sit p[ro]hibitus. ut l. i. ff. de p[ro]sul. sic quilibet admittitur ad off[icium] championis
nisi repellatur. autem. Repellit aut[em] s[ecundu]m. ut in l[ite]ra. quilibet quis. se de p[ro]i. h[ic] sicut exp[er]it et e
utro q[ue] infirmus. ff. de p[ro]sul. l. no[n] p[er] et p[ro]hibuit p[ro] p[ro]m[iss]o ut p[ro]p[ri]e de l[ite]ra p[ro]hibuit.

li. xy. et de iur. canonico. ut de pugna in duello. et de pur. mul. p. totu. Et eadē in principio tractatus
tactu fuit. hec diffinitio lege reprobata. paret iudiciū iuridice diffinitioni. et sic. nō est. cū
de debito eisdem sepis nō sit querendum. ut. l. licet in fi. ff. na. ca. sta. et c. de hys. de
acusat. q. illa iura dātur cū pōt. excommūcatis et diffusio. fuit iudiciū. et sic inferitur. q.
absolutoria lata in duello nō parat exceptam rei iudicat. acisare uolenti in iudicio hē
cōf. hec uera nisi q. uetud. regionis aliud induceret. ut videlicet fuaret in lombardia
fū cuius dispositum q. secutus sūm hunc passum. et sic limitande sūnt solutōes p. dēnū
questionū

An p. uocans ad duellū p. crimē publicū. desistens aduello madat penā turpiliā. Et ita.
Quinto decimo quero. nunquid p. uocans ad duellū p. crimē publicū. desistens aduello
incadat penā turpiliā. Et uē q. sic ad instar. criminalis iudicij q. tenet. ut. l. i. g. p. amō.
aut. ff. ad turpil. eo. uē cū nō p. dēderet q. cū iure cōi sit iurabatu. hāc iudiciū. ut supra.
si iure quo p. missum p. sset dīa ex eadē equitate ipm p. mendum. et dīo arbitrio iudicis. cū
nō sit iure exp. ssa. d. ofi. dē. c. de causis. in fi. ff. d. uē. dē. l. i. p. enā cū turpiliā nō
cedit ipm madere. cū p. ne sūnt respingend. ut. l. cū quidam ff. d. l. et p. et. g. p. ne. d.
p. nū. d. i. regula in p. enis. d. reg. mē. l. d. h. hec ut dīa iure lombard p. cedunt. nā iure
cōi recedens aduello nō p. nitur. ymo talis. leg. obtemperat. et p. sequit. facit q. legem.

An p. uocans ad duellū iure lombard. possit desistere. cū licentia iudicis.
Quinto decimo. quero. nunquid p. uocans ad duellū iure lombard. possit desistere cū licentia
iudicis. apparet q. sic ad instar. acisantis abolitionē imperantis. ff. ad turpil. l. abolitio. et. l.
si quis interueniente. et. l. dēnatus. c. de abolit. p. totu. eo. uē cū hāc clari. q. p. ne abo
litio et bñ fiat. Iure lombard cedit eadē quidē ex cā q. est. q. dēderet p. ad instar. acisantis
ut sup. allegatū est. l. i. c. c. c. p. p.

An p. uocans ad duellū desistere possit. sine pena. an licet q. Item et quādō in duello dicit
Quinto decimo quero. an p. uocans ad duellū desistere possit sine pena. an licet q. Et cum
hāc eadē quero. q. proportionalis in iudicio q. tenet. in duello hāc dicit q. tenet. Et uidet
q. an sine pena possit desistere. nā an licet q. nō dīat quis agere. si agere uult. ut. l. amplius.
ff. de. ra. ha. ergo an desistere p. uerit. Confirmatur. nā an licet q. desistens p. uerit. ff. d. in
iud. uo. l. g. uis. ergo. Confirmatur. p. l. si metu. c. de adult. et. l. miles. ff. de. e. n. et. l.
cūm. ff. ad turpil. In q. uim fiat. l. inferatus. ff. qui post. ff. ad turpil. ubi p. bat. tex. q. d. si
stans ab acisante an licet q. madat in turpiliā. Idem. p. bat. l. p. c. de callip. eo. hāc q. sio.
p. sponit questione alterius d. sponis. d. sponis. ff. q. hāc proportionalis q. tenet dicit in hāc
iudicio duellari. Et uē q. post unā p. sponis acisantis. et aliam rei qua. in iudicio q. tenet. so.
sic fit q. sponis p. p. tenet et q. uadit. f. cū. ut. l. v. r. nōa. nō nōia. ff. p. uerit. c. de iudic.
et aut offeratur. c. de l. iud. q. et. c. vno. c. n. ep. si p. ma p. sponis hāc loco libelli. p. p. sponis
que fit arco est q. uadit. ergo sic fit hāc q. sponis. Contrariū credo uerū. ff. q. fiat hāc q.
stans. cū p. uocat asendo q. crimē q. mīst. et ille negat. q. hāc sit uerū paret. nā post hāc q.
p. sponis uerit. mīst. de callip. in aut ut. l. iud. uerit. in ep. l. i. in p. n. et. l. n. c. de uē. callip.
ff. duellantes post hanc uerbale p. uocantem et q. uadit. uerit. d. asu. ut. d. d. d. d. cū est
Inapit ergo duellū a uerbali p. clamatur. si p. sponis. hāc loco uerit. p. bat. p. testes. et
instrumenta que sūnt post hāc q. ut. l. iud. nō q. sponis. p. totu. et sic modifica solutōem q. sponis
qua q. sponis quis p. mo p. uerit. d. beat. hāc solutō p. missa. p. m. p. alis q. sponis madat in q. sponis illa
an pena turpiliā uendit. sibi l. cū an licet q. et. glo. sūnt q. uerit. d. iud. est in l. sūmiles. ff.
de. ff. de adult. et sūnt hugolin. et tenet q. nō madat. alia. est in l. i. c. ad turpiliā
que tenet q. madat. et sūnt q. sponis. az. et illam credo uerū. p. l. inferatus. ff. qui post. ff. ad turpil.
et p. aut qui semel. c. q. uo. et q. uadit. cū dāt p. uerit. q. acisator. p. uerit. p. an q. uerit
acisantis. uerit. sic intelligit. l. q. iud. ff. ad tur. Et simili mō hāc q. sponis p. missa q. sponis l. iudicis
de iure lombard ut supra. deo grās.

**Explicit tractatus de bello q. uillanus p. me Johanne de liano de mediolano animi
iure utriusq. doctor in studio bononi. d. c. c. c. pendente fore ep. nū. p. n. ciuitatem
qui cū d. d. c. tractatū. d. p. l. a. b. i. c. c. fore. cū ep. nū. d. doctorum aut subiecti c. c. c.
de q. uillanus Amen**

— N. S. —

Tracatus iste de bello pma sui diuisione
diuidit in tres ptes pncipales. Quaz
ultima in sex tractatus diuidit et sub
diuiditur put tibi p tabulam istam clarius
infra demonstrabit. rubricellis suis suo ordine
collatis.

Prima pars pncipalis.

Quid sit bellum et qualiter describat.

Secunda pars pncipalis.

De diuisione belli et qualiter diuidat.

Tercia et ultima pars pncipalis pmit
tunt tractatum et diuiditur in sex
pncipales tractatus.

Primus tractatus.

De spuali bello celesti.

Qualiter spuale bellum celeste est me
ritum et mensura spualis huius belli.

De naturali deductione spualis belli corporis ce
lestium ad bella terrena.

Qualiter p pncipales et astrologos et nales
pncipales necno sit dare bellum.

Secundus tractatus.

De spuali humano bello pncipales pncipales.

De spuali humano bello pncipales pncipales.

Ex quo tractatus. f. de vniuersali corporali
bello et iste diuidit in sex tractatus.

Primus tractatus. f. quo iure introduci sit.

Qualiter iure diuino ortu hnt bellum

vniuersale corporale.

Qualiter iure gentium ortu hnt bellum

vniuersale corporale.

Secundus tractatus. f. pncipales pncipales.

Quibus licent bellum inducere vniuersale.

Quibus pncipales et quo iure et q

quos bellum inducere licent vniuersale.

An bellum motu pncipales q ecclesiam sit

iustum et an teneantur subditi in hac optem

perare.

Quid co iure sit cu papa. f. mouet bel

lum qncipales.

Tercius tractatus. f. pncipales pncipales.

que sint aggreffiones bellum.

De legione et cohorte et qui et quot nro

in eis requirantur.

Qualiter milites se hnt debeant in bello.

et an obediant et agniti abstine papianu

Que teneant ad officiu dntis belli

Qualiter varie puniuntur milites pncipales

relinquunt.

De fortitudine et pncipales na. Et que for

tudo dicat moralis et que no. Et que bellu

duat ad finem rectu et que no.

An fortitudo sit virtus cardinalis.

Vnde et qualiter quatuor pncipales vir

tutes dicantur cardinales morales.

Quid sit virtus.

De triplici pte boni et qualiter quatuor car
dinales virtutes dicantur a bono.

Quid et qualiter in bello quis possit dia
forne.

Quid sit pncipalior actus fortitudinis

Quot qndz fortitudinis qd utat in bello.

An fortis in bello paus debeat morte

expectare q fugere.

An miles vna cu Comitua sua uenit

in hostes prumpens et ipse totu hnt

gens q mandatum dncis sit capite pntend

An dncis belli capto ab hostibz sit uenia qe

tendu.

Quartus tractatus. f. pncipales pncipales.

Quid sit in duas sui pncipales ptes.

Prima pars. f. qui teneantur ad bellum

accedere.

An adio moto iusto bello teneantur uaf

sali ad bellum accedere pncipales pncipales.

An subditi vni baroni mouenti quera

otra regem sui teneantur iuuare ipm ba

ronem otra regem.

An subditi vni baroni mouenti quera

alteri baroni teneant ipm pmo ul regem

mouentem guerra alteri rex iuuare vtri

usqz madato dno gauisu recipro

An vassallus nonlemus duos dncos utriqz

ul altero et que iuuare teneantur.

An vassallus teneat iuuare dnm q parce

ul pater otra filium.

An omes duos ciuitatu teneat iuuare

unam q aliam.

An vassallus uocatus adio teneat ipm

sequi in partibz vltimarime ad pugnandum

otra barbaros.

An sui teneant ubiqz sequi dnm ad bellu.

An libera uocati teneat seg pzonu ad bellu.

An agricolae uocati teneantur sequi dnm ad bellu.

An qfederatos seu obligatos possit dnc

prouocare ut ipm uiuet in bello.

An subditi vni iurisdictionis tm teneantur

ad bellum accedere.

Secunda pars. f. de psonis no astricis ad

bellum libere accedentibus et diuiditur.

in vi. pncipales ptes.

Prima pars. f. de libere accedentibus.

An libere accedentes obligent sibi illum

in cuius finem uadunt pncipales pncipales.

An comodatus teneat qmodum esse

et arma in bello depda reficere.

An odutor teneatur lauari equos et arma

in bello depda reficere.

An pncipales q pncipales pncipales ad bellu

accedentes ager in locis impio ul furti.

Quemant ad bellu accedi.

De libere accedentibus ad bellu.

In no vna si ppro motu accedentes ad bellum obligent sibi illum in cuius finem uadit
In no vna si ppro motu ad bellum accedentes et ualuerit pfacientes obligent sibi illum remittentem et qd dicentes in cuius finem uadunt

Secunda pars de accidentibus quia tenetur ad

In talis agat qd illum que uiuat.

Tercia pars de accidentibus p quam qsequi-

In tales obligent sibi illum in cuius sub-

Quarta pars de accidentibus quia laet opas

In tales agant qd ducentes.

Quinta pars de accidentibus ad spoliandi.

In talibus actio qpetat.

Esta pars.

In clerici ad bellum accedere possint.

In suspendiarij in allamania qstituto sa-

In suspendiarij a suspit de allamania p ci-

In qm solum debeat suspendiarij an fin-

In suspendiarij se absentantes ead de hiecia

In aliquo tpe pnt salariu p illo tpe.

In si suspendiarij culpa sua sunt nolint tpe

In si suspendiarij fuisse possit p substitutu

In si suspendiarij pdat suspendium tpe quo

Quintus tractatus terci pmapalis f d

In aliquid capiens in bello effiaatur dno

In capti in bello duaz Cunitati effiaatur

In capti in bello effiaatur capientiu

In qsecutus in bello totu suu interesse possit

In morientes in bello saluent

In p reb et possessionib ecclie corporali

In p reb et possessionib ecclie corporali

In p reb et possessionib ecclie corporali

In p reb et possessionib ecclie corporali

In p reb et possessionib ecclie corporali

In p reb et possessionib ecclie corporali

In p reb et possessionib ecclie corporali

Indigentes in bello qui pugnare no poss

In licet prelati vae ipralis iurisdictione

In licet prelati p iuria subdia sui in

In delegatus pape possit indicare bellum

In bella indicia p eccliam q excoicatio fit

Secus et ultimus tractatus terci pma

Quatuor tractatus terci pmapalorie

Prima pars p.

Quid sit particulare bellum.

Secunda pars p.

Quot sint spes pncipalis belli.

Tercia pars p.

Quo iure induci sit pncipale bellum

Quarta pars f quib licent hoc pncipale

In clerico qpetat hoc bellum indicare

In si licent clerico se defendere ead acc

In licet clerico inuaso celebrata se de

In baptizanti inungenti qfirmanti ordina

In pntia ecclie ipius pueri ne sine bapismo decedat

In pntia ecclie ipius pueri ne sine bapismo decedat

In pntia ecclie ipius pueri ne sine bapismo decedat

In pntia ecclie ipius pueri ne sine bapismo decedat

In pntia ecclie ipius pueri ne sine bapismo decedat

In pntia ecclie ipius pueri ne sine bapismo decedat

In pntia ecclie ipius pueri ne sine bapismo decedat

In pntia ecclie ipius pueri ne sine bapismo decedat

In marito puxore.
An p fce sorore et alijs omnes psonis.
An quis teneatur que defendere ne ab
 alio cadatur.
An vassallus teneat iuuare dnm suum.
An miles teneat defendere dnm suum.
An miles teneat defendere prepositum suum.
An vassallus iudens dnm inuasiu ex
 vna pte patet ex alia. Vtq; pariter
 in morte articulo nisi iuuentur nec
 iuuare pot nisi alter qd que uiuabit.
Quid iuris eodem themate retento in
 clerico qui iudens epm suu inuasiu ex
 vna pte patet ex alia. Vtq; parit
 in morte articulo nisi iuuentur nec
 iuuare pot nisi alter qd que uiuabit.
Secunda po. f. p quib; reb; liceat. Etia.
An liceat p reb; iuste possessis.
An p iuste possessis.
An et si liceat res defendere. defendens
 etiam cu moderamine inculpate tuele
 si cadat ul inuadet regularitate incitat.
An p reb; suis defendendis q clerici exco
 muniati inuadit modat manus inhiacendi.
An p reb; defendendis lraus amias
 licet sit subsidium impendere.
An p reb; defendendis lraus sit sic of
 omis um vi. repellere. sicut q quos lraus
 est p psonis.
An p reb; d psonis ul qmodatis. licet
 vim vi. repellere.
Sepima po. f. qualis liceat hoc pticula
 re bellum indere. v.
An liceat cu moderamine inculpate tuele
Quid sit moderamine inculpate tuele
 et que in eo requirant.
An liceat vili et debili cu enst se defend
 re o forte et robustum pugno tm pudente
An et si liceat in gementi se defendere.
 qualis intelligatur illud in gementi.
Qualis intelligatur. equalencia in ip
 actu violento.
An vindicasse iudeat no defendisse si
 spoliatore men de possessione mea. expulsi
 qui an satisfacere volebat de possessione re
 stituerenda.
An parati ad me pueniendum expectare
 debam ul cu pueniet.
An miles que diuinus agceditur. conse
 atur vim vi. repellere. si expectet et parat
 cu in al fugere possit.
An si vulneratus post vulnera in pma
 vulnerante et ipm pariat quod in no l
 pumy debeat ut de losus. idnt culpabilis.
An violentia illata psonis possit p amico
 pulsari sicut illata reb;.
An finiens de mandato dmi sin exore ipi
 interficiens excusetur.
Octima et ultima po quarti tractatus
 de reprasalijs. R.
Quid sit finis pticularis belli.

Octimus tractatus tm pmapalis. f. de
 particulari bello quod fit ad defensam
 mista corpis quod represalie nuncupatur
 et diuiditur. ite tractatus pma sin diu
 sione in duas ptes pmapales. R.
Prima pars pmit vnde et aquo ordm
 habuerunt represalie.
Secunda po. f. de casu represaliar.
Tercia po. f. de ca materia et diuidit in
 quatuor ptes pmapales. R.
Prima po. f. de materia in qua. R.
Quid sit materia in qua.
Quid sit materia circa qua.
Quid sit materia q qua.
Quid sit materia ex qua.
Cum psonis qcedat facultas represaliandi
An inchois represalie qcedantur.
An cum; no subiectis iurisdictioni ciuitatis
 et al no facientib; factis sint indere
 represalie.
An cui p quetam qcedant represalie. q
 ciuitatis origine.
An cum; et hinc p cum; limitate in
 represalie qcedant.
An cum; vni ciuitatis qui po ul statuto
 reatant ut ciues alterius ciuitatis p
 eadem qcedi possint represalie.
Secunda po. f. de materia circa qua. R.
An q res corp qui capi no possint vigore
 represaliar possint inchoa represalie.
An represalie simpliciter indere. exeri possit
 q bona existentia in territorio ciuitatis
 ne qua sint indere. ut capiant et reducat
 inchoa territorii ciuitatis indere.
An si vna ciuitas indicat represalias q
 aliam possit rector ciuitatis indere.
 scribendo rectori ciuitatis q qua exere re
 represalias in res ibi situate.
Tercia po. f. de materia q qua. R.
An represalie indere p vna ciuitatem
 extra hoies alterius ciuitatis. exeri possit
 extra incolae illius ciuitatis.
An represalie indere p vna ciuitate extra
 hoies alterius ciuitatis. exeri possit extra
 hoies illius ciuitatis. allibi morantes.
An represalie exeri possint o ciues ul
 incolae vnius ciuitatis. honora subiectos
 eiusdem qui ead sint ciues alteri ciuitat.
An extra pulchres exeri possint represalie.
An q clerici no quingatos. ite et an q
 quingatos exeri valeant represalie.
An ep negligente de clericis suis. iusta
 ciem succere. nec hui possit reuocare ad si
 prorem possint inchoa represalie. q clerice
 cosdem p iudice seculari.
An q bon ul ead al prudentes bonore
 cantes pndia p studio exeri possint represalie.

de reprasalijs.

Quoniam am bariatores et ceteri possit rep salie
Quoniam autem euntres ad iudicium ad sanctum iaco-
 bum vel ad alium locum indulgentie Item
 an et nam gantes et an et illos qui in me-
 ram non possint et in multis alijs casibz
 ceteri valeant rep salie

Quoniam et bononensem pontem medolam ibi
 iusticia facientes possint rep salie qd

Quoniam et offales potius vel rectoris iusticia
 am facientes possint rep salie iudici

Quoniam et qfules priores civitatis iusticia
 facere denegantes possint iudici rep salie

Quoniam et singulares personas penitus inco-
 tes pp delictum dñi vel alterius pua de

quo non sit iusticia iudici possint rep salie

Quoniam et honores quo ad quid tñ no aut plene
 vni civitati subditos iudici possint rep salie

Quoniam et ceteri genus hominum facere iusticia
 deneganti iudici possint rep salie

Quarta pars. f. de ma ex qua que infigit
 ex defectu iurisdictionis qd pmo requiri

de iudex an qd rep salie qcedantur pp.

Quoniam requiri debent iudex ut iusticiam
 faciat an qd rep salie qcedant

Quoniam iudex iusticia patientis qui no audet
 litigare in civitate iusticia inferentis po-

ssit scribere ut in alios iurisdictionem pro-

rogent vel arbitros eligant. faciat

Quoniam iudex requiri debeat ut iusticiam
 faciat iusticia requiri ut rep salie indicat

Quoniam dicitur no posse hñ copia superioris
 ut locus sit rep saliarum iudici

Quarta pars pnapalis. f. de ca formali. et
 diuiditur in duas ptes pnapales. scilicet

Prima pars. f. de forma indicandaz rep
 saliarum. p. p. p.

Quoniam opere possit ad ha ne indicant
 rep salie

Quoniam et stabit de iusticia pñ. vel cu
 denegata

Quoniam si aliqua capiant aigore rep saliarum
 deponeri valeant ex po decreto an po.

Quoniam et pñ. f. de pñ. exendi rep salias

Quoniam licet illi cui sunt qasse rep salie que
 toritate ppa. vel p mmi pñ. qcedant. ceteri

Quoniam personas et res captas teneat capiens
 iudici presentare. vel sibi retinere

Quoniam res capte vigore rep saliarum cedant
 vel insoluti accipiant vel extingantur

Quoniam dieb. feriatis possit rep salie ceteri

Quoniam si quis ult. se defendere. vel res captas
 qualis qgnitio adhibeat

Quoniam exacto qpetat recessus. q illu pp
 cui debui vel delictu exactus est.

Quoniam exacto suavitur. q rectore fiat q
 delictorem pnapalem

Quoniam captus vigore rep saliarum possit aucte
 pñ. honores illius civitatis capere i q captus sit

Quoniam pñ. rep salie qcedi possint iudici
 al aucte no pmissio.

Quoniam statutu civitatis quo auct. q filius
 teneat. p patre delinquentem. possit ceteri

q filium existentem ex rectorum civitatis
 dente.

Quoniam pñ. possit licite fieri q dñus mat
 p alio.

Quoniam et ultimus tractatus tercia pna
 palis sui opie. f. de pñ. illam bello. quod

fit ad purgationem quod duellum nuncupatur
 et duellum pñ. pñ. duellum. in septem a-

partes pnapales. p.

Prima pars. pñ.

Quod sit duellum.

Quoniam pñ. f. quod sint pñ. duelli. pñ.

Quoniam duellum sit pp odij exagratum

Quoniam sit duellum pp glia. i. pñ. q sequatur

Quoniam sit duellum pp purgationem aliam
 crimine iudici

Tercia pars. f. quo iure sit inductu et quo
 inhibitu. pñ.

Quoniam duellum quod sit pp hodie exagratum
 sint interdictu iure naturali supto

p instanciu ne pñ. ex. ex sensualitate
 ad aliquid appetendum.

Quoniam duellum quod sit pp hodie exage-
 ratum sit inhibitu iure nali sumpto. p

roabili intelligentia. et sic iure gentiu
 et diuino. Canonico et civili

Quoniam duellum quod sit pp gloria sit
 inductu iure nali supto p instanciu ne ex

sensualitate pñ. ex.

Quoniam duellum quod sit pp gloria sit
 inhibitu iure diuino.

Quoniam duellum quod sit pp glia sit inh-
 bitum iure gentiu

Quoniam duellum quod sit pp glia sit in-
 hibitu de iure canonico. et civili

Quoniam pñ. f. pp quid duellum purgato-
 rum sit pñ. et pp quid pñ. pñ.

Quoniam duellum purgatoriu inhibitu sit
 iure diuino

Quoniam duellum purgatoriu inhibitu
 sit iure gentiu

Quoniam duellum purgatoriu inhibitu
 sit iure canonico

Quoniam duellum purgatoriu sit inhibitu
 regularit iure civili

Quoniam pñ. f. inquit. casibz pñ. duellu
 purgatoriu. pñ.

Quoniam duellum iure Lombardo in. xx.

Quoniam pñ. f. me quos infra post duellu.

Quoniam duellum purgatoriu iure pñ.

de duellu
ad finem.

Qualiter duellum purgatoriu adinstat
ut iudicij qrenuosi.

An iuramentu & astu int duellantes sit
prestandum et p quem.

An vne pti Campione dato in cubus
iure pmissis liceat etia alteri parti da
re Campionem.

Qualiter in cubis hinc inde cu Campio
qceditur fieri ipso dato & qcessio.

An quilibet admittat p Campione.

An cuius electio sit duellum.

Qualiter ordinetur duellum.

Quibz armis duellari debeat.

An si arma seu fustes unus duellantiu
frangantur ul cadant debeat alia dari.

Quis duellantiu pns puerere debeat.

An duellum pma die no finit sequenti
die terminari possit.

An in duello subcumbens in expensis q
dempnetur.

An pucans in duello subcumbens pu
niatur pena talionis.

An pucans ad duellum p crimine sub
cumbens et qdempnatus possit de eodem
crimine accusari in iudicio qrenptioso.

An pucans ad duellum p crimine pub.
desistens aduello mandet pena turpilium.

An pucans ad duellum iure Lombardo
possit de iudicio licentia desistere.

An pucans ad duellum possit sine pea
an hie qrestatu desistere Item an et qm
in duello dicatur hie qrestari.

Explicit tabulla sup Rbello tractatus
de bello. Dni Johanne & liano. Do
gras Amen Amen Amen.

IOHANNIS DE LIGNANO
Tractatus de Bello

The text of the Bologna Manuscript, MS. Miscell. B. 1393,
as "extended" and otherwise revised
by
The Editor

(See the Prefatory Note which follows)

PREFATORY NOTE

THE preparation of the "extended" text which follows has cost the editor, even with the preliminary aid of an expert in the decipherment of contractions (Miss E. Barker), a very serious expenditure of time and labour.

To begin with, he had to break up the continuous wording of the manuscript into punctuated paragraphs, using capital letters where called for. Then began the far more serious work of correcting the mistakes of the original copyist, and of checking, and re-writing on a uniform system, the endless quotations made by the author from the Bible and the Civil and Canon Laws. The biblical quotations, curiously enough, proved to be the most faulty. The, much more numerous, legal citations were generally right, but needed endless typographical amendment in order to render each distinguishable from its neighbours, and its parts distinguishable *inter se*. The following statement will explain the difficulties of the task, and the steps taken to surmount them. It may also not be unwelcome to readers unfamiliar with Civil and Canon Law.

The mediæval method of citing the Civil Law is comparatively simple. First comes a mention of the collection from which the quotation is taken, whether from Justinian's Digest, Code, Institutes, or Novels, or from the Libri Feudorum; indicated respectively by "ff.", "C.", "Inst.", "Authent.", or "Feud.". Next comes a clue to the "Title" of the Digest, the Code, or the Institutes, indicated by setting out its head-line. Last comes a mention of the specific "law" to which reference is made, indicated, as a rule, not by its number within the "Title" but by its initial, or catch, words. Citations from the Novels or the Feudal laws are somewhat differently managed.

The system of the Canon Law is more complex. The large collections, cited by Legnano, are: the "Decretum Gratiani", the "Decretales Gregorii Papæ IX", the "Liber Sextus Decretalium", and the "Constitutiones Clementis Papæ V". The two last named collections are respectively indicated by "Lib. VI" and "Clem.", but the source of citations from the "Decretum" or "Decretals" has to be inferred otherwise than from abbreviated descriptions of those works, except that the "Decretals" are sometimes indicated by the word "Extra".

The Decretum consists of three "Books", the first of which contains 101 "Distinctiones"; the second 36 "Causæ", each sub-

divided into "Quæstiones"; the third, entitled "De Consecratione", contains 5 "Distinctiones". References are made to Book I by "dist." or "di.", preceded by a numeral; to Book II by "q.", preceded and followed by a numeral; to Book III by the words "De Consecratione," "dist." or "di.", followed by a numeral. References to the Decretals, Sext, and Clementines, without any mention of the "Books" into which they are divided, specify merely the "Title" in question, indicated only by its head-line, e. g. "De Iureiurando", or "De Sent. Excomm.", with which the canonist is presumed to be familiar.

The ultimate reference in the case of Book I of the Decretum is to a "canon", in the other cases to a "chapter", and is made as a rule by setting out the initial, or catch, words of the canon or chapter.

The preceding statements must not be taken as exhaustive, e. g., the third Quæstio of Causa 33 constitutes an independent treatise, entitled "De Pœnitentia", consisting of several Distinctiones, and is so quoted.

In this "extension", pains have been always taken to commence the head-line of a "Title" with a capital letter; to distinguish between "canons" and "chapters"; to print the catchwords of the ultimately cited "lex", "canon", or "chapter", in italics; and to mark the termination of each quotation, where it does not end a sentence, by a semicolon. It is hoped that the search for a quoted passage may have thus been rendered, to a reader armed with the indices of catchwords to be found in good editions alike of the Corpus Iuris Civilis and the Corpus Iuris Canonici, not prohibitively difficult. Such wrong references as have been detected have been sometimes indicated by a mark of interrogation, (?); sometimes they have been enclosed in brackets [], after which the right reference has been inserted.

The original treatise is not divided into chapters, but, for convenience of reference, the chapter divisions occurring in the print of 1477 have been inserted in brackets, so far as they are applicable, in the margin of this extension.

T. E. H.

INCIPIT TRACTATVS DE BELLO DOMINI

IOHANNIS DE LIGNANO

DE MEDIOLANO IVRIS VTRIVSQVE DOCTORIS

REX Israel mutavit habitum et ingressus est bellum," iii Regum xxii capitulo. Israel est solium Domini et, ut scribitur Ieremiæ iii cap., "vocabunt Israel solium Domini." Et hoc est patrimonium sanctæ Romanæ Ecclesiæ, cuius caput est Ierusalem, id est alma civitas Bononiæ, quæ vere vocari potest Ierusalem. Nam in ipsa quorumcunque scibilium, et maxime iuris, dilucidata est veritas. De hac scribitur, Zachariæ viii cap., "Vocabitur Ierusalem Civitas veritatis." Hæc "formosa sicut Ierusalem," Cantici vi capitulo. De hac etiam clamat Propheta, Sophoniæ i cap., "scrutabor Ierusalem in lucernis"; et Actuum v cap., "Replevistis Ierusalem doctrina vestra." De hac etiam scribitur Apocalypsis xxi cap., "Vidi Civitatem sanctam Ierusalem," et ibidem xxi cap., "Ostendit mihi Civitatem sanctam Ierusalem descendentem de cœlo," id est Bononiam. Et vere de cœlo descendit, Cum ibi fons veritatis, iurium quæ adeo per ora principum promulgantur, viii di., *quo iure*; C. De longi temporis præscriptione, l. ultima. De hac scribit Apostolus ad Hebræos xii cap., "Civitatem Dei viventis Ierusalem cœlestem." Et idem Apostolus ad Galatas iv cap., "Quæ autem sursum est Ierusalem libera est." De hac etiam scribitur, ii Paralipomenon vi cap., "Elegi Ierusalem ut ibi foret nomen meum."

Verum etiam, permittente Altissimo, et superius disponentibus corporibus, hæc Civitas Bononiæ, ut Ierusalem, ad extremum mutata est et devastata, et propter inhabitantium delicta innumera, odia mutua, diu comminatus est Altissimus ipsius destructionem, ut scribitur [Iudicum xxix] iv Regum xxi cap., "Delebo Ierusalem sicut deleri solent tabulæ." De insidiis inhabitantium scribitur ii Paralipomenon xxv cap.,* "Descenderunt insidiæ in Ierusalem."

* In fine, "tetenderunt ei insidias in Ierusalem."

Et propter superbiam inhabitantium comminatus est Dominus per Prophetam, dicens, "Computrescere faciam superbiam Iudæ et superbiam Ierusalem multam," Ieremiæ xiii capitulo. Et propter hanc clamat Propheta contra inhabitantes, dicens: "Dabo Ierusalem in acervos arenæ." Et alibi propter hoc clamat Propheta, dicens, "Ponam [Ierusalem] Samariam quasi acervum lapidum," Michææ i capitulo. Et propter hoc clamat Propheta contra nutritos in ea, dicens, "Contristatis Ierusalem nutricem vestram," Baruch iv capitulo. Et propter hoc, scilicet inhabitantium excessus, factum est ut exercitus regis Babylonie obsident Ierusalem. Ieremiæ xxii capitulo. Et propter hoc factum est quod scribitur Ezechielis v cap., "Hæc est Ierusalem in medio gentium," id est hostium. Poenæ causa factum est etiam quod scribitur Threnor. i cap., "Facta est Ierusalem sicut quasi polluta."

Alma igitur civitas Bononiæ vere Ierusalem nuncupatur, et caput solii, id est patrimonii, sanctæ matris Ecclesiæ. Rex autem actu regens et gubernans est Reverendissimus in Christo pater et dominus, dominus Egidius, miseratione divina Sabinensis Episcopus. Hic enim mutavit habitum et ingressus est bellum. Nam de throno pacifico, id est sacratissimo Collegio Cardinalium, et de latere dextro sanctissimi Papæ Innocentii Sexti destinatus est ad recuperationem Ierusalem, id est patrimonii penitus deperditi, et ni ipsius recuperatione mutavit habitum. Nam, relicta pontificali quiete, ingressus est bellum, et bellum forte ut princeps serenissimus. Nam ante ipsum non erat Rex in Ierusalem, ut scribitur Iudicum [xxii] xxi cap., "in diebus illis non erat Rex." Et propter ea dixit Dominus ad eum, scilicet dominum Egidium, "misi te regere super populum Domini," Iudicum ix capitulo^o. Et ipse dicere potest "elegit me Dominus ut essem Rex," primo Paralipomenon, xxviii capitulo. "Et ipsum constituit Dominus Regem super universum Israel," i Paralipomenon xii capitulo^o. Et iste "Rex surrexit de solio Domini," Ionæ iii capitulo. Et bene ingressus est bellum et feliciter. Nam ut allatus ala duplici, scilicet summæ prudentiæ et fortitudinis inclitæ, omnia iura sacrosanctæ Romanæ Ecclesiæ, tyrannice usurpata, de nihilo produxit ad esse, de tenebris ad lucem, ut dici possit quod de nihilo aliquid fecerit, Genesis i cap., et lex unica in principio, C. De rei uxoriæ actione. Vere igitur, ut Rex Israel, mutavit habitum et ingressus est bellum.

Quia igitur Rex Israel, id est patrimonii, et maxime civitatis, Bononiæ, quæ est vere caput patrimonii, et quæ, sic ut supra dictum est, de extremo ad extremum deducta, mutavit habitum et ingressus est bellum, et hoc diebus nostris, immo et pendet, satis videretur incongruum hoc sub silentio penitus pertransire.

Idcirco ego, Iohannes de Lignano de Mediolano, minimus inter ceteros iuris utriusque doctor, ad vos Reverendissimum in Christo patrem et dominum meum, dominum Egidium, miseratione divina Episcopum Sabinensem in partibus Italiæ, pro sancta Romana Ecclesia Vicarium Generalem, et verum Regem Ierusalem, transmittendum concepì tractatum facere de Ierusalem, id

est de civitate Bononiæ, et de Bello, quod habitum mutando estis ingressus, hoc ordine. Nam de civitate Bononiæ ponam sex causas implicantes quæ acriter contingerunt dictam civitatem, ab anno domini MCCCCL usque ad MCCCCLX, maxime propter quæ insurrexit dominii mutatio, et cum quotis temporum et aspectibus annorum circa meridies dierum quibus hæc contingerunt, non autem horarum. Et hæc appono quia in aliquibus tractatibus intendo iuris metas excedere, explicando aliqua quæ forte evenient, et cuilibet causæ submittam unum tractatum vel plures, ut occurret. Aliquos tractatus transibo sub silentio, aliquos explicabo, unum solum exnunc publicabo, videlicet tractatum De Bello, promittens, Domino annuente, singulos tradere explicatos, tempore congruo, et causa cessante inhibitionis, supplicans eidem Reverendissimo Patri ut imbecillitatem intellectus supportare dignemini, et hoc, ut modicum suscipere exordium, corrigendum si placuerit et reformandum, iuxta gentilium Sapientis auctoritatem: "Exiguum munus, etc." Descendo igitur ad themata, et ex causa ponam in figura. Et ecce.

Sedente Iove clavigero, clementiam * Sexto ferente, super cathedram piscatoris, ex eius edicto præpropere Mars † accessit, ut libere ingrederetur viride et floridum Tauri pabulum.‡ Hoc fuit annis Domini MCCCCL, die viii Iulii. Tunc Sol in Cancro, Grad. xxiii, Min. xxxii. Luna cum Leone, Grad. xxviii, Min. xxi. Draco capite geminabat, Grad. xxvi, Min. ix. Saturnus in Ariete, Grad. xxvi, Min. xxxii. Iupiter cum Cancro, Grad. xxviii, Min. li. Mars in Libra, Grad. xi, Min. xviii. Venus retrogradabat in Cancro, Grad. xxix, Min. xx. Mercurius Venerem sequebatur in Cancro, Grad. ix, Min. x. Et tunc altissimus filiorum Saturni, § circulum || gestans a Iove, ¶ interius viperatus, ex limbis lateralibus tribus ** altis viperis exsurgentibus, a septentrione descendens, intercedente Mercurio †† Iovem, cum Marte pervenit in pabulo, et in pastorem perpetuum gregis Taurini exstitit assumptus.‡‡ Et hoc fuit annis Domini MCCCCL, die xxiv Octobris, Sole . . , Luna in Cancro, Grad. ix, Min. i, Saturno in Ariete, Grad. xxii, Min. xix, Iove in Leone, Grad. xviii, Min. xiii, Marte in Sagittario, Grad. xxiii, Min. xxxii, Venere in Virgine, Grad. xxv, Min. xx, Mercurio in Libra, Grad. xxi, Min. xxv, Capite Draconis in Geminis, Grad. xx, Min. xix, Cauda, etc.

Post temporis lapsum, operante Iovis clementia, §§ necnon et circulo |||| quem Saturni filius ab eo susceperat, factum est quod Saturni filius Iovem in pabulo verbaliter suscepit, ¶¶ et ipsum primum gregis pastorem recognovit.

* id est, Clemente Papa VI regnante.

† id est, exercitus comitis Romandiolæ pro Ecclesia.

‡ id est, Bononiam.

§ id est, Archiepiscopus Mediolanensis.

|| id est, dignitatem pontificalem.

¶ id est, Papa.

** id est, tribus nepotibus scilicet M. B. et G.

†† id est, dominus Iohannes de Pepoli.

‡‡ id est, in dominum est electus.

§§ id est, Papa Clemente.

|||| id est, pontificali dignitate.

¶¶ id est, Archiepiscopus Papam in dominum recognovit.

Hoc fuit annis Domini MCCCLII, die vii Septembris, Sole in Virgine, Grad. xxiii, Min. x, Luna in Virgine, Grad. ii, Min. xxx, Capite in Tauro, Grad. xiv, Min. xvii, Saturno in Tauro, Grad. xxiv, Min. xxvii, Iove in Virgine, Grad. xxix, Min. xvii, Marte in Sagittario, Grad. vi, . . . Min. xx, Venere in Virgine, Grad. ii, Min. viii, Mercurio in Libra, Grad. xxvii, Min. . . .

Ecce Taurus hoc tempore modico trinum contraxit matrimonium, nec erubuit, vivente coniuge, nunc hunc nunc illum meretricali more appetendo prorumpere, ut dici possit de te quod scribitur Isaiaë [iii] i cap. " quomodo facta est meretrix civitas fidelis plena iudicii ? Iustitia habitabat in ea, nunc autem homicidia. Argentum versum est in scoriam. Vinum tuum mixtum est aqua. Principes tui infideles, socii furum. Omnes diligunt munera, sequuntur retributiones. Pro pupillo non iudicant. Causa viduæ non ingreditur ad eos. Propter hoc ait Dominus exercituum fortis Israel, Heu ego consolabor super hostibus et vindicabor de inimicis meis, et convertam manum meam ad te, et excoquam ad purum scoriam tuam, et auferam omne stannum tuum et restituam iudices tuos, sicut fuerunt prius, et consiliarios tuos, sicut fuerunt antiquitus. Post hæc vocaberis civitas Iustitiæ." Sic contingit et continget de te Taure, cum tripartitus fiet semicirculus, surget quies, fluet motus, senectus est obstans, sed vitiorum iuventus hoc operatur.

Huic causæ subicio tres tractatus : unum de Marte, id est de Bello. Istum publico. Alium de Iove, id est de Ecclesia, et ipsius gubernatione per pastores suos, et per aspectus narratos, quis exitus ipsius prosperitatis et adversitatis, maxime respectu huius temporis, patrimonii. Alium de Saturno, id est de Imperio et ipsius gubernatione per proceres hodiernos, et quis exitus prosperi et adversi, maxime respectu regiminis ecclesiastici et temporalis Italici, licet aliquantulum transcendat metas iuris. Hos tamen nunc non publico, ut prædixi, donec cesset causaurgens.

Secunda Causa.

Post hoc, Saturni filio combusto,* elevatis tribus supra nominatis viperis,† Saturnum aquilinum ‡ in cordis centro gestantibus, et combusti thronum ascendentibus,§ ipsi indivisim in pabuli pastores || suscipiuntur, Et hoc fuit annis Domini MCCCLIV, die xi Octobris. Tunc librabat Sol Grad. xxvi, Min. xxii, Luna rugiebat cum Leone, Grad. xvi, Min. xlv, Draco caput tegebat in Ariete, Grad. iii, Min. lviii, Saturnus geminabat, Grad. xxiii, Min. xxiv, Iupiter librabat, Grad. xxii, Min. xvii, Mars in Capricorno, Grad. xxv, Min. iv, Venus luxuriabat in Scorpione, Grad. xvi, Min. xiv, Mercurius in Scorpione, Grad. xi, Min. xlvi, Draco caput tegebat in Tauro^o, Grad. iii, Min. lix.

* id est, mortuo Archiepiscopo.

† id est, nepotibus.

‡ id est, aquilam imperialem.

§ id est, succedentibus Archiepiscopo.

|| id est, in dominos Bononienses.

Post parum temporis, sorte posita super hereditate combusti,* maior ex viperis † in pabulum solus elevatur. Hic non do quotam, quia non pondero ad sequentia. Post hæc, Mercurius, ‡ a viperis penitus exterminari pertimescens, intra pabulum ut pastor assumitur. Ecce hoc tempore brevissimo hic Taurus, luxuria furens, aliud trinum matrimonium contrahere non erubuit. Et quia sic luxuria furens in totuplici contrahendo contubernio, naturam purgabilis excessisti luxuriæ, pluit Dominus super te sulfur et ignem a Domino de cœlo, et subvertit te, et omnem contra te regionem et habitatores, et omnia virentia terræ, ut scribitur Genesis xix capitulo. Cum linea recta semicirculabitur quid tibi curvum est rectificabitur. Hoc autem fuit annis Domini MCCCCLV, die xvii Aprilis, Sole in Tauro, Grad. v, Min. vii, Luna in Geminis, Grad. xxviii, Min. xxxi, Capite in Piscibus, Grad. xxiii, Min. xlix, Saturno in Geminis, Grad. xx, Min. xvii, Iove in Sagittario, Grad. xxii, Min. xv, Marte in Geminis, Grad. v, Min. xxi, Venere in Tauro, Grad. xxvii, Min. xix, Mercurio in Ariete, Grad. xi, Min. xxii.

Huic secundæ causæ subicio tractatus de temporali dominio universaliter infra Imperium, tractando ipsius originem, ipsius species, divisionem, successionem, modum gubernationis et conservationis, explicando unumquodque regimen, a minimo usque ad summum, in toto universo, ultra iuris metas, explicando qualiter secundum varietatem climatum mundi variantur mundi regimina, et qualiter in eisdem climatibus, variatis superiorum motibus et aspectibus, variantur mundi regimina, nam aliquando tyrannides, aliquando populus, aliquando principatus naturalis, communi et vulgato sermone, ut latissime prosequar, in prosecutione huius tractatus.

Tertia Causa.

Post hoc, evanuit vipera maior, § et Mercurius || recognovit sequentem ¶ in pabulo. Hoc fuit annis Domini MCCCCLV, die xxvii Septembris ☉, Sol cum Capra salibat, Grad. xiv, Min. xlvi, Luna mordebatur a Scorpione, Grad. xxiii, Min. xxxi, Draco piscabatur cum Capite, Grad. x, Min. xix, Saturnus cum Cancro, Grad. ii, Min. xlv, Iupiter cum Capra pascebat, Grad. vii, Min. xxxiii, Mars morsum patiebatur Scorpionis, Grad. xxi, Min. xli, Venus cum Capra, Grad. i, Min. liii, Mercurius Venerem præcedebat super Capra, Grad. xviii, Min. lv. Ecce, inverecunde Taure, novum aliud matrimonium sic instantie non erubuisti contrahere, sed parum post hoc, huic dato libello ** repudii, O. revolvit ad A., et rediit cum Mercurio. †† Et hoc fuit anno Domini MCCCCLVI, die xi Februarii, et tunc Sol piscabatur, Grad. o ☉, vii, Min. lvii, Luna geminabat, Grad. xvii, Min. lvi. Caput Draconis erat repletum Piscibus,

* id est, diviso dominio Archiepiscopi.

† id est, dominus M.

‡ id est, dominus Iohannes de Olegio, dubitans mori.

§ id est, mortuus est dominus M.

|| id est, dominus Io. de Olegio.

¶ scilicet dominum B.

** id est, repulso domino B.

†† id est, dominus Io. de Olegio dominium reassumpsit in solidum.

Grad. viii, Min. ix, Saturnus cum Cancro retrocedebat, Grad. o, Min. xlv, Iupiter saltabat cum Capra, Grad. xvi, Min. . . . Mars Sagittam ferebat, Grad. xviii, Min. lxiv, Venus aquam spargebat, Grad. xxiv, Min. lviii, Mercurius piscabatur, Grad. o, Min. xxxviii. Inhonestum visum est Tauro binos simul coniuges . . . Vtilius fuisset Tauro binos simul pati . . . quam per tot contubernia divagari. Et quia sic divagata es, tibi continget quod scriptum est : "Adducet Dominus super te gentem de longinquo et de extremis finibus terræ, in similitudinem aquilæ volantis cum impetu, cuius linguam intelligere non possis, gentem procacissimam quæ non deferat seni nec misereatur parvulo, et devoret fructus iumentorum tuorum ac fruges terræ tuæ, donec intereas, et non relinquit tibi triticum et vinum et oleum, armenta bovum, et greges ovium." Hæc allocutus est Dominus ad populum prævaricantem, ut scribitur Deuteron. xxviii capitulo. Cum quaternarium resolvetur internarium tunc tibi fiet mobile fissum.

Huic causæ subiungo tractatus de concessione et recognitione dominii temporalis, explicando varios modos penes varietatem dominiorum et concedentium et recipientium.

Quarta Causa.

Post hæc, constante matrimonio Mercurii cum Tauro,* flores et viriditas pabuli taurini fuerunt regnante Iove clavigero, innocentiam Sexto ferente, totaliter exsiccati,† et hoc fuit annis Domini MCCCCLVII, die xii Aprilis. Tunc Sol erat cum furibundo Tauro, Grad. o, Min. xlvi, Luna fundebat Aquas, Grad. v, Min. xxix, Draco caput sub unda tegebat, Grad. iii^o, Min. xxxviii, Saturnus cum Cancro, Grad. xv, Min. xvi, Iupiter natabat in Aquis, Grad. xxvi, Min. xxiii, Mars geminabatur, Grad. xv, Min. xiv, Venus ludebat cum Piscibus, Grad. xxi, Min. xx, Mercurius cum Tauro, Grad. xi, Min. xxxii. O Taure invecunde, hæc pœna fuit antiqui et temerarii tui divortii a coniuge qui tecum constante matrimonio auxit dotes tuas, te acutis cornibus super quadriennium elevando et de septentrione versus meridiem latissimo solio præficiendo. Sed furore impatiens, facto divortio, ruptis cornibus corruisti. Et, quia sic elatus, inquit Dominus ad te Taurum : "eo quod elatum est cor tuum quasi cor Dei, idcirco adducam super te alienos robustissimos gentium, et nudabunt gladios suos super pulchritudinem sapientiæ tuæ et polluent decorem tuum, et interficient et trahent te, et morieris in introitu occisorum in corde maris. Numquid dicens loqueris, Deus ego sum, coram interficientibus te, cum sis homo non Deus? in manu occidentium te, in manu alienorum, morieris, quia ego locutus sum, inquit Dominus," ut hæc scribuntur Ezechielis xxviii capitulo. Cum Iob cornibus Tauri medebitur, quod in centro est ad sphaeræ concavum reducetur. Huic causæ adiungo tractatum De Ecclesiastica Censura, circa singulas species ipsius tractatus explicando singulariter.

* id est, præsidente domino Iohanne de Olegio.

† id est, latum fuit interdictum divinorum et suspensio studii in civitate Bononiæ.

Quinta Causa.

Post hæc iterum depascente Mercurio,* intra pabulum Tauri secundo viperatus † in filium Saturni per adoptionem assumptus, ‡ Martem motu veloci, ut Tauri pabulum ingrederetur propere destinavit, § qui plures gradus lucidos et diurnos ipsius est ingressus. || Finaliter, operam dante Mercurio ¶ altissimus Iovis frater, ** ab eo pontificalia, a Saturno imperialia, a Marte bellica, supra ceteros Ecclesiæ cardines gestans, Martem †† directum præveniendo, intra pabulum est susceptus, ‡‡ ut circulo primæ causæ revoluto. Sicut tunc motum velocem tarde gradiens prævenit in termino, sic nunc vice versa volantem reptilem præcessit, sed tunc præveniens virilius occupavit. Circumflexus circumflectetur, tandem vix eidem clavibus aperietur, clavibus clauditur. Anterius non negligat claviger quod posterius, alis tensis volatile, tendit ad astra. Requirit rugientem ut emittat rugitum Saturnus. Retrogradus nititur erigi. Volatus non attinget astra, sed terrea circumspiciet, rugitus non longe sonum, nec Saturnus erigetur ad summum. Tibi, Taure, insperata fiet quies. Quintus in Zodiaco difformiter motus ut quiesceret donec radiis iungatur, nec circumflectetur sinet. Ab auge iam motus, per circumferentiam epicirculi fluens efficitur unius. Prius circumvolet, post circumvolvitur, ruiturus post non sublevetur. Volatilium multiplex reducetur, et unum vidi volantem ad astra plumis contingentem et ima. Vidi castrametantem ubi non pugna, caveat ne post mox fiat una. Post vidi alterum angelum volantem in manibus tenentem evangelium. Saturnus, in circulari epicirculo de opposito deductus, ad auge retrogradando de auge deducetur ad assem. Quod imum transduxit in summum, quod summum circumducet in imum, surget Leo grandis et mixtus sonitu scindens pacifer venia tritus. Concutiet fossa, reducet summum ad ima, sparsa redigentur in chaos, ut ex ipso astra derivarunt in troncos. Non lugeat Taurus cum vicinus quietis speretur eventus. Currus transvehitur, bobus punctis occa subitur. Catuli pascuntur, uni primum vel alteri sequens astute. Vidi plumata in nido minuto, imperfecto, niveo, corvino. Scindetur nidus et solium obtinet unus qui fuit trinus, post binus sextus et unus. Erigitur tutus, titubabat alter, et ecce nullus. Video duos primos cœli consiliarios ad grande colloquium accessuros. Fiet colloquium in loco humido et venenoso. Ibi tractabitur ut mundus inferior concutiat. Ibi tractabitur ut in mundo sectetur. Ib tractabitur ut mundi principatus permutetur. Ibi tractabitur ut Ecclesia periclitetur. Ibi tractabitur ut pestilentia et fames eleventur. Ibi tractabitur ut regio maritima conquassetur. Ibi tractabitur ut mundi princeps in sede permutetur, fiet magna concussio. Tres autem inferiores consiliarii in alio angulo anteriori eiusdem domus eodem tempore colloquentur adinvicem, et multa de mundi dispositione disputabunt, et diffinient, et hæc colloquia fient annis Domini MCCCLXV de

* id est, dominus Iohannes de Olegio.

† id est, dominus B.

‡ id est, vicarius imperialis effectus.

§ id est, magnum exercitum ut civitatem apprehenderet transmisit.

|| id est, pluribus fortibus comitatus.

¶ id est, dominus Iohannes de Olegio.

** id est, dominus Egidius, domini Papæ legatus.

†† id est, exercitum domini B.

‡‡ id est, in dominum Bononiæ assumptus.

mense Octobris. O Taure, oportet te attentum esse ac cornibus paratum, cum mundi fulgor in stabulo tuo subumbrabitur, nec negligas. Et fiet hoc MCCCLXI, die v Maii. Hæc in grandi colloquio et multiformi tractarunt planetæ, de quibus in themate dixi. Hæc varii operantur revolutionum aspectus, et signandum est aliud in matrimonium Tauri. Nam annis revolutis quibus mense et die divertit, repulso O.,* eisdem reintegravit recepto S.†

O Taure, motu pergens multiformi, cum motus sit ordinatus ut terminetur in quiete, tibi inest ut motus terminetur in motum, et regulariter in deteriorem. Tibi finis motus est principium motus. Tibi quiescere est moveri, nunc imitando gentilem Catonem, qui repudiatam reassumpsit, regrediendo unde diverteres, inquietis terminum dirigere confidebas. Sed adhuc est ut movearis donec Altissimo placuerit stabilem tibi fingere modum. Ingressus est plene Iovis frater annis Domini MCCCLX, die primo Aprilis. Tunc Sol cum Ariete, Grad. xix, Min. xxiv, Luna librabat, Grad. xi, Min. xxi, Draco cum Capite sagittabat, Grad. xvii, Min. xxxvi, Saturnus rugiebat cum Leone, Grad. xxv, Min. viii, Iupiter cum Tauro, Grad. xxi, Min. xviii, Mars piscabatur, Grad. vi, Min. xxiii, Venus Martem piscando præibat, Grad. x, Min. lii, Mercurius in Ariete, Grad. xvi, Min. x. Huic iungam gesta Pacis, cum facta fuerit. Et faciam tractatum singularem De Pace. Taure, infirmaris non plectorice, sed cathocinie, et vere cathocinie, quia humorum difformitas et excessus in quali diu provisum est in quanto, sed fervor in quali speras medicorum plures sunt, ut tibi medelam afferant.

INCIPIT TRACTATVS DE BELLO

[Cap. i.] In tractatu Belli sic procedam :
 Primo, ponam descriptionem Belli Humani, de quo principaliter tractaturus sum, in genere.
 Secundo, dividam Bellum per membra.
 Tertio, prosequar singula membra.

Quid sit Bellum, et qualiter describatur ?

Bellum sic describitur. Bellum est contentio exorta propter aliquid dissonum appetitui humano propositum, ad dissonantiam excludendam tendens.

Dixi "contentio." Hæc ponitur ut genus, nam sub se continet et bellicam contentionem et alias quascumque ut l. *si usque*, § fin., ff. De aqua pluvi. arcenda. Dixi "propter dissonum," et est causa unde oritur quælibet con-

* id est, Hostiensi legato.

† Sabinensi legato.

tentio. Dixi "appetitui humano," ad differentiam brutorum. Dixi "ad dissonantiam," etc., et est causa finalis cuiuslibet belli, nam quodlibet bellum tendit finaliter ad tollendam displicentiam quæ fuit belli introductoria, et sic fiunt bella propter pacem, xxiii, q. i, *noli*.

De divisione Belli, et qualiter dividatur.

[Cap. ii.]

Secundo, Bellum sic dividitur. Bellum aliud Spirituale, aliud Corporale.

Spirituale aliud Cœleste, aliud Humanum. Spirituale Cœleste est de quo habetur Iob, xiv capituloⁿ. Humanum est de quo scribitur Ad Romanos vii cap., ibi "video aliam legem repugnantem lēgi mentis meæ"; xxxii, q. v, *si Paulus*.

Corporale aliud est Vniversale, aliud Particulare. De Vniversali habetur ff. De captivis, quasi per totum; xxiii, q. i, et q. ii.

Particulare aliud fit ob tutelam corporis sui et rerum, et de hoc habetur ff. De iustit. et iure, l. *ut vim*; ff. De vi et vi ar., l. i, § *vim vi*; et ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*; et l. i, C. De vi; et cap. *olim*, De restit. spol.; et in Clem., *si furiosus*, De homicidio.

Aliud fit ob tutelam corporis mystici, vel eius partis, propter defectum iurisdictionis, quod "Represaliæ" nuncupatur, de quo in Authent., ut non fiant pignorationes; et De iniuriis, Lib. VI. Aliud fit propter contumaciam resistentis iurisdictioni iudicis, de quo in l. *qui restituere*, ff. De rei vindicatione.

Aliud fit propter purgationem, quod "Duellum" appellatur, de quo C. De gladiatoribus, l. una; et De pugnantis in duello, per totum titulum. Verum est quod posset dividi prima divisione per iustum et iniustum, sed in his modicum insistendum, et singula membra singulariter sunt explicanda ex ordine suo.

Et primo de Bello Spirituali Cœlesti, brevissime illud explicando, et sic de singulis.

Ordo Tractatum.

Tractabo igitur de Bello Spirituali Cœlesti.

Secundo, de Spirituali Humano.

Tertio, de Corporali Vniversali.

Quarto, de Particulari, quod fit ob tutelam corporis sui.

Quinto, de Particulari, quod fit ad defensam mystici corporis, quod "Represaliæ" nuncupatur.

Sexto, de Particulari, quod fit ad purgationem, quod "Duellum" nuncupatur.

De Spirituali Bello Cœlesti.

[Cap. iii.]

Redeundo ad singula, dico quod cœleste bellum insurrexit propter ingratitudinem insurgentem propter defectum fissionis^o caritatis impressæ a Creatore, in intelligentiam inter ceteras sublimiorem creatam. Et huic non congruit descriptio superius data. Vbi sciendum est quod, ut inquit Gregorius in Moralibus, ab initio creationis angelicæ naturæ, Altissimus omnium creator creavit Luciferum ceteris angelicis intelligentiis eminentiorem. Nam ipsius primatus non fuerunt inferiores cedris in paradiso Dei, ut scribitur Ezechielis xxxi, abietes, platani, non æquarunt [firmitatem] summitatem nec frondibus eius, nam ipse speciosus factus in multis condensisque frondibus dicitur, quia, prælatum ceteris legionibus, tanta^o illum spiritus pulchritudinis reddidit, quanta et supposita angelorum multitudo decoravit. Ista arbor in paradiso Dei tot quasi condensas frondes habuit quot sub se positas supernorum spirituum legiones attendit. Hic fuit signaculum Dei similitudinis. Fuit iste sic creatus ceteris eminentior, sicut et cetera foramina habuit præparata ad caritatem suscipiendam. Nam hic a principio conditionis suæ capax caritatis est conditus, quia si repleti voluisset [samtibus] sumptibus^o angelicis, tamquam positus in regio ornamento lapidibus, potuisset inhærere, sed caritatem propter superbiam non assumpsit. Si enim caritatis auro se penetrabilem præbuisset, sanctis angelicis sociatus, in ornamento regio lapis scissus mansisset. Habuit ergo foramina, sed superbæ vitio caritatis auro non sunt repleta.

Quia igitur ceteris iste eminentior fuit, ut signaculum similitudinis Dei creatus, nec caritate propter superbæ vitium repleti voluit, idcirco peccans, sine venia damnatus est, quia magnus sine comparatione creatus fuit, igitur propter hoc de paradiso eiectus, ut prolixè et pulcherrime videri potest in cap. *principium enim*, De Pœnit., di. ii. Et fuit Gregorii, ut prædixi. Et hoc fuit Spirituale Cœleste Bellum, circa quod, ut præmisi, parum insistendum, tamen, quia dixi ipsum ceteris eminentiorem, est attendendum quod quædam sunt collata angelis in principio creationis suæ communiter, sed differenter, quædam communiter, sed indifferenter. Collata communiter sed differenter fuerunt naturæ sive substantiæ subtilitas, intelligentiæ perspicacitas, liberi arbitrii habilitas. Hæc tamen differenter, nam quidam sunt in substantia subtiliores, quidam in intelligentia perspicaciores, quidam libertate arbitrii habiliores. Collata autem communiter sed indifferenter fuerunt spiritualitas, indissolubilitas, indivisibilitas, immortalitas.

In his omnes parificantur, et per hoc intelliges quibus Lucifer fuerit ceteris eminentior, quia in collatis communiter sed differenter.

Est etiam attendendum quod Diabolus fuit exaltatus per naturalem prærogativam, de qua dictum est, exaltatus est etiam propter victoriam quam habet contra hominem aliquando in bello quod gerit contra ipsum, unde scribitur in Psalmo, "Exaltasti dexteram deprimentium eum," quam victoriam timens David dicebat, "Illumina oculos meos ne unquam obdormiam in morte, ne quando dicat inimicus meus, prævalui adversus eum." Exaltatus est etiam propter superbiam, unde dictum est ei "elevatum est cor tuum in

decore tuo," cum ipse dixit, " ascendam in cœlum, et ponam thronum meum ad aquilonem, et ero similis Altissimo," Isaïæ xiv capitulo⁷⁾.

Qualiter Spirituale Bellum Cœleste est metrum et mensura Spiritualis Humani Belli. [Cap. iv.]

Hoc igitur fuit Spirituale Bellum quo eiectus fuit Lucifer de paradiso Altissimi, et forte ex illo habuit ortum Spirituale Humanum. Nam in unoquoque genere est devenire ad unum, quod sit primum et mensura eorum quæ sunt in communi genere. In genere igitur repugnantia bonorum contra mala est devenire ad primum. Primum sunt principia, principium autem virtutis est Altissimus, principium autem vitiorum et princeps est Diabolus. Ipsorum igitur pugna est primum et mensura cuiuslibet inferioris pugna spiritualis humanæ.

De naturali deductione Spiritualis Belli corporum cœlestium ad bella terrestria. [Cap. v.]

Et forte, naturaliter loquendo, bella corporalia terrestria habent bella cœlestia correspondentia, nam, ut dicit Philosophus, necesse est hunc [modum] mundum contiguum esse superioribus lationibus, ut omnis virtus inde regatur, primo Metaphysicorum, et secundo Cœli et Mundi. Omnis igitur actus inferior corporeus dirigitur a supercœlestibus, et ibi est pugna, id est repugnantia virtualis, insurgens propter diversitatem corporum cœlestium, et maxime planetarum, quæ plus apud cuncta operantur quam fixæ, et diversitatem aspectuum, situum, et motuum eorundem. Quibus forte attentis, non foret bene possibile mundum esse sine bello. Et forte non esset peccatum, secundum semitas naturalium et astrologorum, tenere mundum non posse diuturnari sine bello et cum sola pace, quod sic posset aperte demonstrari.

Qualiter secundum theologos et naturales philosophos necessario sit dare bellum. [Cap. vi.]

Positis causis sufficientibus et necessariis productivis alicuius effectus, necesse est poni ipsum effectum, sed belli ponuntur causæ sufficientes et necessario productivæ, ergo necesse est ponere ipsum bellum. Probatur maior. Nam effectus assequitur causam suam quoad esse productivum et destructivum, i. q. vii, *quod pro remedio*; i. q. i, *quod pro necessitate*; lv di., *priscis*; lxi di., *neophitus*; i. q. i, *detrahe*; De baptis., *debitum*. Probatur minor. Nam secundum semitam naturalium impossibile est cœlum stare, Physicorum vii et viii, immo ipsius motus est perpetuus, et corpora cœlestia ex sui natura operantur in hæc inferiora effectus repugnantes, et hæc effectuum repugnantia insurgit hic inferius propter varietatem aspectuum corporum cœlestium et motuum ipsorum, quod patet ex sensatis. Nam, stricte in proposito dedu-

cendo, propter variam correspondentiam corporum cœlestium, tempore constructionis civitatum sunt repertæ civitates naturaliter se odio habentes, et sic amicæ, sic geneologiæ, sic et particulares homines qui se naturaliter odio habent, non præcedentibus de meritis hinc inde, sic et naturaliter se diligentes. Cum igitur bella oriantur propter odia et dissonantias appetituum, hæc autem necessario producentur a motibus corporum cœlestium, quæ semper et necessario operantur, infertur bella fore de necessario, attenta necessitate materialis et corporeæ naturæ. Fateor tamen quod potentia naturalis non necessitatur directo, et per se immo resistere posset. Hinc est quod inquit Ptolemæus in libro Centum Verborum "anima sapiens dominatur astris, quis est ille regulariter, et laudavimus eum," fateor tamen, si theologi secus sentiant, me subicere, in omnibus quæ eos contingunt, eorum correctioni.

De hoc tamen bello nihil intendo tractare, quia nimis foret iuris metas excedere.

Causæ autem theologiæ, propter quas non est pax universalis in orbe, sex solent reddi. Prima, quia non puniuntur maleficia, Ecclesiastici iv capitulo. Secunda, abundantia rerum temporalium, Genesis [iii] xiii cap., facta est rixa inter pastores Abraham et pastores Loth; Iacobi v, unde bella et lites, etc. Tertia, quia non occupamur in pugna contra Dæmonem, ideo non pugnamus ut homines, Isaïæ xxviii cap., "percussimus fœdus cum morte et cum inferno"; ad Ephesios [v] vi, "non est colluctatio adversus carnem." Quarta, quia non consideramus damna guerræ in qua perdimus animam et corpus et divitias, Ieremiæ lvi^o capitulo. Quinta, quia non ponderamus eventum belli, qui est dubius, primo Regum xii. Sexta, quia non servamus præcepta Dei, Ieremiæ iii cap.^o, "utinam attendisses mandata mea, etc."

Ex prædictis igitur infertur duplex spirituale bellum cœleste. Primum, Creatoris contra Luciferum ipsum, propter defectum caritatis in superbiam delatum, penitus de throno cœlesti ad centrum terræ deducendo. Et illud fuit momentaneum, de quo Iob xiv cap., ubi supra. Secundum, virtualis repugnantia corporum motuum et aspectuum cœlestium, introductoria formalis repugnantia in hæc inferiora, propter quæ introducuntur inferiora bella, et hoc est continuum et successivum. A primo, theologice loquendo, dependet spirituale bellum et humanum, quod provenit ex repugnantia intellectus ad sensum. Nam Princeps Malorum persuadet et inducit ad vitia, ut deorsum emergat, ad [Romanos vii] Ephesios vi^o, Princeps autem Bonorum econtra ut ad superna eleve. A secundo autem dependet bellum corporale humanum, immo etiam spirituale humanum, naturaliter loquendo, ut infra proximo tractatu discutietur.

De Spirituali Humano Bello, secundum theologiam.

[Cap. vii.]

Bellum Spirituale Humanum potest explicari theologice et moraliter. Theologice, est contentio exorta propter invidiam repugnantiam Diaboli contra rationabilem creaturam, habens fomitem a peccato primi parentis. Et de

hoc bello spirituali loquitur Apostolus ad [Romanos vii] Ephesios, vi cap., sic inquiens, "Induite vos armaturam Dei ut possitis stare adversus insidias Diaboli." Et illa armatura sunt virtutes et bona opera quibus homines arman-
tur contra vitia, xi, q. iii, *qui resistit*. Insidiæ autem Diaboli sunt innumera-
biles, nam, ut inquit Iohannes Papa, "Habet enim mille nocendi modos, nec
ignoramus astutiam eius. Conatur namque a principio ruinæ suæ unitatem
Ecclesiæ rescindere, caritatem vulnerare, sanctorum operum dulcedinem invi-
diæ felle inficere, et omnibus modis humanum genus pervertere ac perturbare.
Dolet enim satis et erubescit caritatem, quam in cœlo nequivit habere, homines
constantes ex luti materia in terra tenere. Vnde oportet, quantum fragilitati
nostræ conceditur, ut omnes aditus nocendi eius versutiæ muniamus, ne mors
ingrediatur per portas nostras." Hæc habentur xvi, q. ii, cap. *visis*. Sic
alibi pulcherrime scribit Hieronymus ad Iovinianum, sic inquiens, "Sic in
malis atque peccatis semina sunt incentiva et perfectio Diaboli. Cum viderit
nos supra fundamentum Christi ædificasse fœnum, ligna, stipulam, tunc sup-
ponit incendium. Ædificemus ergo aurum, argentum, et lapides pretiosos,
et attemptare non audebit, quamquam et in hoc certe non sit segura possessio,
sedet quippe leo in insidiis, ut in occultis interficiat innocentem, et vasa figuli
probat fornax, homines autem iustos temptatio tribulationis." Hæc sunt
transumpta De Pœnit., di. ii, cap. *si enim*, circa medium. Alibi etiam scribit
Alexander Papa in hæc verba, "Nam Diabolus non cessat circuire quærens
quem devoret, et quærens quem ex fidelibus perdat, et maxime illos quos
ardentiores in servitio Salvatoris eique familiares invenerit." Hæc sunt tran-
sumpta iii, q. i, *nulli*, et cap. *verum*^m, originaliter [Luçæ xi et v capp.]^m;
prima Petri v. Et habuit hoc bellum fomitem a peccato primi parentis, non
ut a causa positiva, sed ut a causa sine qua non. Nam si non fuisset peccatum
primi parentis, ad nihilum fuisset hæc pugna.

De Spiritualis Humano Bello, secundum moralem philosophiam.

[Cap. viii.]

Moraliter autem intelligendo, et secundum semitam philosophorum lo-
quendo, Spirituale Humanum Bellum est contentio exorta propter repugnan-
tiam rationis ad sensitivum appetitum. Vbi sciendum quod secundum Philo-
sophum, secundo De Anima, Anima habet quinque potentias, scilicet, vegeta-
tivam, sensitivam, appetitivam, intellectivam, et, secundum locum, motivam.
Appetitiva dividitur in sensitivam et rationalem. Idem Philosophus, i Poli-
ticorum, quod anima dominatur corpori principatu disposito, id est in ordine
ad servum, id est sicut dominus servo. Intellectus autem dominatur sensui
principatu regali, id est in ordine ad liberos, hoc est dicere quod anima domina-
tur corpori sicut dominus dominatur servo. Intellectus autem dominatur sensui
sicut superior subdito tamen libero. Vltcrius attendendum quod intellectus
dicitur rationalis, quia in se ipso habet formaliter rationem, appetitus autem
sensitivus dicitur rationalis, non quia in se ipso habeat rationem, quia sunt
potentiæ distinctæ formaliter, sed dicitur rationalis quia in homine est aptus

[3]

natus obedire rationi, irrationalis autem, quia potest non obedire rationi, vel ponit exclusionem rationis formaliter. His præmissis, evidenter apparet quod appetitus sensitivus humanus aliquando obviat rationi, aliquando obedit rationi. Vbi obviat, est bellum et repugnantia. Vbi obedit, est pax et concordia. Exemplum patet in magno mundo ubi omnia inferiora sunt apta nata obedire superioribus. Hinc est quod inquit idem Philosophus, primo Metaphysicorum et secundo Coeli, necesse est hunc mundum esse contiguum superioribus lationibus ut omnis virtus inde regatur, et tamen aliquando non obediunt propter indispositionem materiæ, et inde fiunt aliqua præter intentionem agentium superiorum, ut monstra, sic sensitivus appetitus, ut inferior, aptus est obedire. Hinc est quod dicit idem Philosophus, secundo De Anima tractatu, de moto et de movente, si intellectus moveat appetitum sensitivum, et ipse eidem obediat, motus est naturalis, ac si sphæra superior moveret inferiorem. Si autem econtra, tunc motus non est naturalis ac si sphæra inferior moveret superiorem. Exemplum patet in monarchia civili, nam aliqui sunt subditi repugnantes principibus suis. Exempla huius repugnantiae tolle in continente et in incontinente. Nam et in continente appetitus sensitivus inclinatur in excessivum, utpote inordinatum cibum, potum, vel aliquid simile. Ratio discat illud fugiendum, ut nocivum, et tamen in continente vincit intellectus et ratio, et proprie continentia non est virtus moralis firmata, nam, ut inquit idem Philosophus, in virtuoso omnia consonant. Vnde cum, ex multis et frequentibus actibus, in appetitu sensitivo firmata fuerit promptitudo quædam, inclinans ipsum appetitum sensitivum in bonum, et conformiter rationi, tunc proprie est virtus. In incontinente autem patens est hæc repugnantia, sed ibi vincit appetitus sensitivus, nec illa dicitur vitium firmatum, donec ex frequentibus actibus ita assueverit inclinare in malum, quod sine aliqua repugnantia nunc semper inclinet. Hæc repugnantia proprie censetur bellum spirituale humanum, loquendo moraliter. De hac repugnantia etiam loquitur Apostolus ad Romanos, vii capitulo. "Video aliam legem repugnantem legi mentis meæ"; transumptive, xxxii, q. v, si *Paulus*. De hac etiam repugnantia scribitur vi di., *sed pensandum*; De constitutionibus, *nam concupiscentiam*. Et de hoc spirituali bello loquitur Gregorius, xxiii, q. i, *nisi bella*. In hac autem repugnantia ab adolescentia regulariter est inclinatio in malum, nam omnis ætas ab adolescentia prona est in malum. Genesis viii cap.; xii, q. i, *omnis ætas*. Et ratio consuevit multiplex assignari. Prima quia malum potest quis per se, bonum autem non sine gratia. Alia est propter fomitem originalis peccati impellentem ad malum. Alia quia facilius pervenerit ad malum quam bonum. Nam bonum consistit in medio essentialiter, vitia autem in extremitatibus, ad medium autem transitur unica via recta, ad extremum autem multipliciter. Alia quia plura sunt impedimenta boni quam mali. Alia quia non fit bonum nisi cum iudicio rationis, qua adolescentes parum vigent, propter offuscationem organorum corporalium. Et hanc credo veriore rationem. Hoc de Bello Spirituali, circa quod plura possent tractari. Sed prætermitto, quia transcenderent metas iuris, in quibus minus quam possibile sit intendo distendere.

De Vniversali Corporali Bello.

[Cap. ix.]

Tertio, tractaturus de Bello Vniversali Corporali, ipsius tractatum explicabo per quæstiones :

Primo, quo iure ortum et inductum sit bellum.

Secundo, quibus liceat indicere universale bellum, subiungendo contra quos.

Tertio, quæ sint aggregantia bellum, explicando, per modum summæ, actus licitos et illicitos personarum bellum aggregantium, et formando quasdam quæstiones circa ipsa.

Quarto, quæ sint personæ quæ artari possunt ad bellum, et quod de accedentibus non astrictis.

Quinto, de his spoliis quæ fiunt in bello, et aliis quibusdam quæ in bello fiunt.

Sexto, per modum tabulæ ad instructionem canonistæ, de quæstionibus contingentibus materiam belli. Vbicunque in Corpore Iuris Canonici tractatum fuerit per Glossatores et Doctores, remittam.

Quo iure ortum habuit Bellum Vniversale Corporale.

[Cap. x.]

Redeo ad primum, et primo quæro quo iure ortum habeat Bellum Vniversale Corporale. Solutio. Iure divino et iure gentium. Iure divino, et probatur Iosue viii ; primo Regum xvi capitulo. Iure gentium, ff. De iustit. et iure, l. *ex hoc iure*.

Qualiter iure divino ortum habuit bellum universale corporale.

Dixi quod bella orta sunt iure divino, ubi sciendum quod bella nedum domino permittente, immo positive concedente, inducta sunt. Et hoc demonstrari potest, nam omnis facultas tendens in bonum adeo positive nedum permissive derivatur. Sed facultas belli indicendi iusti tendit in bonum, ergo a Deo positive provenit. Probatur maior, nam "omne datum optimum et omne donum perfectum desursum est descendens a Patre [hominum] luminum," Iacobi i ; i, q. ii, *quem pio*. Probatur minor, nam indictio belli iusti et bellum iustum tendit in bonum, nam tendit in pacem et quietem universi. Hoc probatur auctoritate Augustini ad Bonifacium, sic inquentis ; "non enim bellum quæritur ut bellum exerceatur, sed bellum geritur ut pax quærat." Subdit, "Esto ergo bellando pacificus, ut eos quos expugas ad pacis utilitatem vincendo perducas." Habentur xxiii, q. i, *noli*. Est igitur finis belli pax et tranquillitas universi. Ergo infertur a Deo originaliter et positive provenisse. Confirmatur. Nam omnis actus punitivus malorum a Deo provenit, sed indictio iusti belli est actus punitivus malorum et rebellium. Ergo a Deo positive provenit. Probatur maior. Nam scribitur, "mihi vindicta[m], et ego retribuam," [Proverbiorum xxii c.]; [xxiii, q. i, cap. *item cum in Proverbiis*]; et alibi, "mea est ultio et ego retribuam," Deuteronomii xxxii ; ad Hebræos x ; ad Romanos capitulo [xiii] xii. Probatur minor auctori-

tate Augustini, in Sermone De puero centurionis, xxiii, q. i, *paratus*, ver. *nam corripiendo*. Immo per hanc inductionem concludi posset theologicæ de necessario in universo fore malos et rebelles, nam maiestati divinæ insunt actus præmiativi bonorum et punitivi malorum, ut scribitur, "nullum bonum, etc." Tunc, illo præmisso, posset sic induci, posito actu necessario, ponitur obiectum terminativum illius actus. Hoc probatur per verba Philosophi libro ii De Anima, nam posito actu visionis ponitur obiectum visibile. Item et actu auditionis posito, ponitur obiectum audibile. Posito igitur a principio creationis mundi actu punitivo in Deo, necessario ponitur obiectum punibile, et tale est Malum, ut supra deductum est. Confirmatur primum principale. Nam omnis actus per quem tollitur nocendi facultas a Deo positive provenit. Sed indictio belli iusti est huiusmodi. Probatur hoc auctoritate Augustini, sic inquentis, "Bella geruntur ut ad pietatis, iustitiæ societatem victis consulatur." Subdit, "nam cui licentia iniquitatis eripitur, utilius vincitur, quoniam nihil est infelicius felicitate peccantium, qua poenalis nutritur impunitas, et mala voluntas, velut hostis interior roboratur." Hæc habentur xxiii, q. i, *paratus*, ver. *ac per hoc*. Confirmatur. Omnis potestas est a Deo, iubente vel permittente, ergo potestas bellica sic provenit, sed non solum permittente sed et iubente. Ergo iubente. Probatur principale, ad Romanos xiii; transumptive, xxiii, q. i, *quid culpatur*. Quid plura? Nonne hoc patet, inspectis mundi generationibus? Nam a principio creationis mundi usque ad tempora Noe Deus per se ipsum, et sine ministro, malos exterminabat, ut patet de Cain et Abel, et quibusdam aliis regibus, ut scribitur Genesis iv et v capitulis. Per se igitur bella induxit punitiva et malorum exterminativa. Infertur igitur ex præmissis bella iure divino inducta originaliter. Figuraliter, immo forte naturaliter, demonstrari posset. Nam ut inquiunt naturales, homo est parvus mundus, et sicut fit gubernatio in parvo mundo, sic in toto universali, similitudine tracta, ut inquit Philosophus viii Physicorum, ac in regimine naturali corporis constat quod ubi nullus est humorum excessus, nulla est rebellio repugnans conservationi et durationi naturali. Vbi autem humorum excessus propter inordinatum regimen, tunc pugna naturæ tendentis in conservationem contra excessum tendentem in destructionem, et in pugna aliquando sufficit naturalis potentia ad correctionem repugnantiae, aliquando est impotens, propter excessum morbi, et tunc est opus extrinseco remedio, utpote medicamine sapiente naturam veneni, repugnantis tamen morbo. Sic directe in magno mundo. Nam aliquando in regione et plaga mundi nullus est rebellium excessus, et tunc nulla pugna, immo uniformiter tendit ipsius gubernatrix Natura ⁽¹⁾ conservationem. Aliquando est excessus rebellium, tendentium in destructionem gubernationis et conservationis, et tunc aliquando Natura per se corrigit, ut monitionibus, exhortationibus, et aliis placationibus, et tunc non est opus bello, nec medicamine venenoso. Aliquando in tantum excessit morbus quod opus est medicamine venenoso, penitus materiam morbi extirpante, et tale medicamen est bellum eradicativum et exterminativum malorum. Sic igitur in parvo mundo, recurrit ⁽¹⁾ propter defectum virtutis interioris ad medicum, qui operatur reme-

dio extrinseco et venenoso, sicut in magno mundo gubernator generalis, qui est Altissimus Creator, et est medicus universi, tendens in ipsius conservationem et gubernationem, cum in tantum excreverunt humores tendentes in destructionem universi, vel partis eius, Dei iustitia [excessiva et ulterius importabilia]⁶⁾ respectu conservationis monarchiæ mundanæ, utitur remedio bellico, ut exterminet vitia et excessus, et discensia⁷⁾ reducatur ad terminum temperamenti. Et, sicut in corpore humano isti humorum excessus fiunt circa membra singula corporis humani, et etiam distrosio⁸⁾ insurgit, aliquando propter humoris unius excessum, quandoque alterius, sic in universo, circa singulas regiones et mundi plagas, quæ sunt membra magni mundi, fiunt hi vitiorum excessus, quæ repugnant ipsius gubernationi, et aliquando in uno, aliquando in alio, secundum vitiorum varietates. Et sic contingit plagas mundi aliquando infirmari propter vitiorum excessum, quæ quandoque sic excedunt quod opus est medicamine eradicativo, quo eradicabuntur aliquando boni cum malis, sicut medicina evellit etiam mixtim bonos cum malis. Immo aliquando propter dictum excessum penitus exstinguuntur, ut mors contingit etiam in singularibus suppositis, quod patet ex sensatis, nam regiones infinitæ propter hæc sunt penitus extinctæ et inhabitabiles redditæ. Infinita possent recitari exempla, hoc idem contingit in genealogiis et in regiminibus, quæ etiam minuuntur et penitus exstinguuntur. Et licet hæc dicta sint sic figuraliter, tamen textibus legis divinæ apertissime demonstrantur, nam, ut legitur Genesis xix cap., propter excessivum morbum Sodomæ Deus usus est medicamine bellico et eradicativo contra Sodomam, Gomorram, Seboim, Segor, et Oleale, licet duæ perierint propter vicinitatem, ut De Pœnit., di. i, cap. *sed continuo*; et cap. *clerici*, De excessibus prælat. ; et in Authent., ut non luxu. contra naturam, circa fin. coll. vi. Possent induci innumerabilia exempla. De isto etiam medicamine bellico, scribitur Iosue viii cap., nam ibi Dominus Noster iubet [ad Iesum nave] ut constituat sibi retrorsum insidias, id est insidiantes bellatores, ad insidiandum hostibus. Et Augustinus, in libro Quæstionum super verbis Iosue, "Iusta autem bella definiri solent quæ ulciscuntur iniurias," id est delictorum excessus. Et subdit, "sic gens vel civitas plectenda est quæ vel vindicare neglexerit quod a suis improbe factum est." Subdit, "sed hoc genus belli sine dubio iustum est quod Deus imperat, qui novit quod cuique fieri debeat." Non dicit "permittit," immo "imperat." Subdit "in quo bello dux exercitus, vel ipse populus, non tam auctor belli quam minister Dei iudicandus est." Et sic clare demonstratur Deum, ut medicum altissimum, et conservatorem universi, bella imperare, ut eradicentur delicta. Hæc habentur transumpta xxiii, q. ii, *Dominus Noster*. De hoc etiam bello et medicamine eradicativo scribitur i Maccabæorum v cap., et Deuteronomii cap. ii; ubi ex mandato Dei filii Israel bella gerunt[ur] contra Armoræos, quod etiam tractat Augustinus in libro Numerorum, et habetur transumptum xxiii, q. ii, cap. *notandum sane*. De hoc etiam scribitur Iudicum v cap., ibi "elegit Dominus nova bella." Loquitur de his eradicantibus vitiorum excessibus. Scribitur etiam [Iosue] Isaïæ xxx, 'Et bellis præcipuis expugnabit,' tan-

quam bellator. De his eradicantibus scribitur etiam i Maccabæorum iv cap., "Confortamini et bellate." Scribitur etiam Ieremiæ xx cap., "Dominus est mecum tanquam bellator." Hieronymus super Sophoniam pulcherrime hoc describit, dicens, "Si quis fortitudinem latronis vel piratæ enervat et infirmos reddit, prodest illis sua infirmitas, debilitata enim membra quibus prius non bene utebantur a malo opere cessabunt." Conclusio est Hieronymi quod sanantur vitiosi si eruatur morbus quo membra infecta in malum disponebantur, et hoc fit bello eradicativo. Hæc habentur xxiii, q. iii, cap. *si quis fortitudinem*. Hoc aperte demonstratur per id quod scribitur Lucæ [vii] xii, et ad Hebræos xii^o dicit Dominus, "Servus qui nescit voluntatem domini sui et facit digna plagis, vapulabit paucis, servus autem qui scit voluntatem domini, et facit digna plagis, vapulabit multis." Excedens igitur recepit plagas a Domino. Hæc sunt transumpta xxiii, q. iv, cap. *ea vindicta*. Hinc legitur quod Elias multos affecerit morte prima manu, et igne divinitus impetrando, iv Regum i cap. ; et cap. *ea vindicta*. Deinde xxiii, q. [v] iv, sic scribitur de aliis tempore veteris legis, iii Regum xvii et xviii cap. ; sic scribitur quod verbis Petri, apostolorum principis, Ananias et uxor eius mortui ceciderunt, Actuum iv capitulo. Transumptive habetur xvii, q. i, *Ananias* ; xxiii, q. [v] iv, *ea vindicta*, in fine. Et de hoc bello eradicante, pulchre loquitur Gregorius ad Brunehildam Francorum reginam, sic inquires, "Ne si, quod non credimus, divinæ ultionis iracundia sceleratorum fuerit actione commota, belli pestis interimat quos delinquentes ad rectitudinis viam Dei præcepta non revocant" ; xxiii, q. iv, *si [vos] quos*. Nonne inquit Dominus ad Moysen ; "maleficos non patieris vivere", Exodi xxii capitulo? Moyses etiam, qui legem acceperat a Domino, cultores idoli morte punivit, Exodi xxxii capitulo. Samuel etiam mandato Domini Agag regem pinguissimum in frusta occidit, i Regum xv capitulo. Transumpta habentur xxiii, q. v, cap. *hinc apparet*. Dominus etiam Ægyptios fluctibus submersit, Exodi xiv cap. ; Israelitarum cadavera prostravit in Eremo, Numerorum xiv capitulo. Transumpta habentur xxiii, q. v, *quid ergo*. Infinita possent super hoc demonstrando induci exempla veteris et novæ legis divinæ, sed hæc sufficiant ut ex his narratis sufficiat concludere bella originaliter ortum habuisse ex iure divino, et non solum Dei permissione, immo et positive ab ipso, ut mundi gubernatore et medico vitiorum eradicativo, propter salutem et mundi conservationem, et cum in hunc finem tendant hæc bellica remedia, ut supra clare deductum est, propter hanc autem [distrasiam]^o et vitiorum multiplicorum excessum in universi destructione progrediente, ex sensatis apparet altissimum Creatorem, temporibus retroactis, et hoc eradicativo remedio usum fuisse, nam regna et mundi regimina quam plura sunt penitus enervata et quam plura remissa. Quid de Troianorum [assensu]^o ? Quid de Græcorum imperio ? Quid de Romanorum universo dominio ? Partes Italiæ temporibus nostris febriunt et subiciuntur examini. Medicina paratur alicubi minorativa, alicubi eradicativa, exercitante ad summum, quorum habitudines sunt fallaces, iuxta doctrinam peritissimi Hippocratis, primo Aphorismorum. Hanc regionem deduxerunt ad motum, ut Altissimus con-

gruam exhibeat medicinam, de cuius humores in quanto et quasi in temperamento plus discant,^o cumque ex pulmentudine fiunt evacuationes, sanet, iuxta doctrinam eiusdem^o. Hæc autem conclusio, videlicet quod bella proveniant a Deo, positive et originaliter demonstrari posset, attento divinæ maiestatis uniformi et perpetuo instrumento. Nam altissimus omnium Creator, mediante cœlesti machina, in hanc terrestrem machinam naturaliter operatur, licet supernaturaliter. Immediate ubi vult spiret et influat, sed naturaliter loquor, iuxta dictum peritissimi Philosophi, primo Meteororum, et secundo Cœli, necesse est hunc mundum contiguum esse superioribus lationibus, ut omnis virtus inde regatur. Influit igitur Altissimus naturaliter in hæc inferiora, mediante cœlesti et sphærico corpore, illud autem totum corpus operatur, mediante motu et lumine, ut inquit idem Philosophus. Et, quia in ipsa tota machina cœlesti sunt partes diversarum virtutum in influendo, ut puta sphærarum varietas, stellarum errantium et fixarum diversitas, a quibus propter varietatem naturarum et motuum dependet effective omne genitum et corruptibile ; idcirco quælibet contrarietas et naturarum diversitas, repugnantia hic inferius insurgens, dependens est desuper. Ex quo statim inferitur quod, cum repugnantia et difformitas sunt inductoria bellorum, quod bella inde oriantur, immo experientia docet quod, propter uniformitatem et difformitatem aspectuum tempore nativitatis, insurgunt inter homines naturales dilectiones et naturales inimicitiae. Hoc quilibet experitur, nam quis diligit statim cum viderit, nullis meritis præcedentibus, et sic odio habebit, nullis demeritis præcedentibus. Sic inter civitates et villas et castra insurgunt dilectiones et odia naturaliter, propter uniformitatem et difformitatem aspectuum tempore constructionis earum, et sic insurgunt odia et bella, influentia cœlesti, sic et amicitia et paces, sic inter provincias. Hæc autem cœlestis natura, mediante motu, est productiva generationis et corruptionis, in his inferioribus augmenti et diminutionis, nedum in singularia supposita, immo in singulas mundi plagas, nam ex hac superna natura plagæ habitabiles factæ sunt inhabitabiles, et econtra. Nam, iuxta doctrinam Philosophi, ubi mare fiet aridum, ubi aridum fiet mare, ex hac naturarum repugnatione ac dispositionum, ex qua rixæ, contentiones, bella particularia et universalia insurgunt. Hæc, propter motuum et aspectuum varietatem, quædam exaltat, quædam extinguit, et quædam deprimit, mutat mundi regimina universalia et particularia. Et hoc demonstrari potest, nam, posita causa sufficienti productiva alicuius effectus, necesse est illum effectum produci, nisi adsit aliquod extrinsecum impedimentum productionis, sed natura cœlestis continue difformatur motu et aspectu, et ipsius partes sunt difformes ex sui natura in influendo. Ergo necesse est produci hos effectus repugnantes et difformes cum non sit quod impedire possit, et per hoc inferri posset quod naturaliter necesse est esse bella, nec aliter procederet naturaliter mundi gubernatio. Protestor tamen quod licet hoc cœlestis natura operetur in hæc inferiora, non tamen per se et directo intellectu humano, immo durat libertas arbitrii, ut in cap. *Nabuchodonosor*, xxiii, q. iv, et cap. *de Tiriis* ; et De Pœnit., di. ii, cap. *sicut*

enim ; et Philosophus iii Ethicorum. Sed operatur in organo virtutum sensitivarum, quæ recepta influentia administrant intellectum, sic per indirectum influit. Hinc est quod scribitur in libro Centum Verborum, "anima sapiens dominatur astris." Sed quia hoc tractare nimis elongatur a terminis iuris, non ulterius circa hanc deductionem insisto, sed sufficiat illatum ex prædictis et demonstratum, bella provenisse a Deo positive et effective, licet ex hoc ultimo inferatur, non immediate, sed mediante machina cœlesti, naturaliter operando.

[Cap. xi.]

Qualiter iure gentium ortum habuerit bellum universale corporale.

Dixi secundo quod bella cognita sunt iure gentium. Hic tamen considero quod, licet dicant iura quod bella sint introducta iure gentium, ut Isidorus, i di., *ius gen.* ; et Hermogenianus iurisconsultus, in l. *ex hoc iure*, ff., De iustit. et iure ; tamen credo quod bella ortum habuerint non solum ex æquitate naturalis humanæ intelligentiæ creatæ, immo primordialiter ex dispositione naturæ naturantis, non solum influentis secundum actus humanos, immo super quibuscunque animantibus et etiam inanimantibus, ut sit verum dicere quod bella habeant ortum a iure naturali, etiam ut distinguitur a iure gentium. Quod qualiter differat probat textus, in l. i, § *ius gen.*, et § *ius naturale*, et l. *ex hoc iure*, ff. De iustit. et iure ; et i di., *ius naturale*, cum sua glossa, et cap. *ius naturale*. Quod hoc sit verum sic ostenditur. Ex principiis naturalibus cuilibet enti naturali creato est insita inclinatio naturalis ad exclusionem cuiusque repugnantis suæ naturali dispositioni. Hoc patet inducendo in singulis naturalibus simplicibus et mixtis, nam aquæ insitum est resistere igni, et econtra, propter repugnantiam qualitatum. Sic in singulis elementis, sic in mixtis, induci posset maxime hoc quod patet in brutis, ubi, ex naturali repugnantia complexionum, unum inclinatur naturaliter ad occisionem alterius, et econtra, sic in rationali creatura insita est inclinatio a natura, etiam circumscripto intellectuali dictamine, ad profugandum quodcunque sibi repugnans. Quod hoc sit verum, ratione probatur, nam natura omnium creatorum productiva non minus debuit esse sollicita in conservatione rationabilis creaturæ quam ceterorum productorum, cum ipsa sit nobilior, ut cap. *cum infirmitas*, De pœn. et remiss. ; et l. *sancimus*, C. De sacrosanctis eccles. ; et cap. *hæc imago*, xxxiii, q. v ; et propter ipsam, ut finem, omnia infra globum lunarem sint producta, ut l. *in pecudum*, ff. De usuris. Si igitur natura induxit inclinationem naturalem in ceteris creatis ad quæcunque sibi contraria profuganda, quanto magis hoc debuit in rationabili creatura? Hoc idem sensualiter patet per singula supposita discurrendo, nam quilibet hoc in se ipso experitur, si hoc ex principiis naturalibus hominibus insitum est, ergo ex hac inclinatione naturali primordialiter habuit ortum bellum, cum bellum, ut supra descriptum est, sit contentio exorta propter tollendam repugnantiam. Infertur ergo quod illa contentio quæ oritur propter tollendum dissonum et repugnans conservationi suæ fundamentaliter habet ortum a principiis naturalibus, et sic in iure naturæ,

prout distinguitur a iure gentium. Sed statim dices, hæc destruunt textus qui dicunt ex iure gentium oriri, ubi advertendum quod, licet a iure naturali inducta sit illa inclinatio naturalis, circumscripta naturali intelligentia, tamen inclinatio illa regulatur per dictamen rationis et intelligentiæ naturalis, sicut dicimus in singulis actibus qui debentur hominibus naturaliter, circumscripto intellectu, utpote inclinatio ad cibum et potum et coitum. Ista hominibus competunt naturaliter, et tamen in homine regulariter dictamine rationis, quod non est in brutis, quæ carent illo dictamine. Sic igitur credo fuisse mentem illorum textuum, videlicet quod regulatio illius inclinationis, introductæ a principiis naturalibus, insurgat ex iure gentium, id est ex æquitate generali naturalis intelligentiæ, sed ipsa inclinatio est de iure naturali. Hoc probat glossa in l. *ex hoc iure*, ff. De iustit. et iure; et i di., *ius gent.* Nam glossa utrobique super verbo "bella" exponit iusta; et sic intelligit de inclinatione regulata per dictamen rationis. Et licet dicant textus quod ex iure gentium insurgunt bella, non tamen credo falsum dicere bella, id est illas regulatas inclinationes, habere ortum a iure civili et a iure canonico. Nam ius civile et ius canonicum non dicunt aliam æquitatem quam sit æquitas a iure gentium. Immo sunt⁹ ipsa æquitas iuris gentium, nam omne ius consistit in quadam rectitudine, et inde ius dictum est, ut i di., *ius generale*. Sed ius civile et canonicum sunt rectitudo vitæ et æquitas iuris gentium. Sed addunt supra rectitudinem illam quandam explicationem, nam ius legale et canonicum habent specificare et explicare rectitudinem et æquitatem iure gentium, quandoque eam interminando per modos congruos, quandoque applicando ad varios actus, quandoque determinando per varios eventus. Hæc omnia probantur per textum in l. *ius civile*, ff. De iustit. et iure. Nam dicit ibi textus, "Ius est quod nec in totum a naturali vel gentium recedit, nec per omnia ei servit. Itaque cum aliquid addimus vel detrahimus iuri communi, ius proprium est, id est civile facimus." Est ergo verum dicere quod bella sunt de iure civili et canonico, id est de ipsa rectitudine, quæ est ius civile et canonicum. Nec obstant textus statim allegati, quia illa rectitudo, nihilo addito vel detracto, ius gentium nuncupatur. Et sic loquuntur iura statim allegata, sed, cum aliquid additum vel detractum est, tunc civile vel canonicum nuncupatur, nulli tamen dubium quin ius civile et canonicum circa bella supra dictamen rationis generalis aliquid addant. Ex prædictis infertur quo iure bella orta fuerunt.

Quibus primo et principaliter, et quo iure, et contra quos, bellum indicare liceat universale. [Cap. xii.]

Secundo quæro quo iure licitum sit Ecclesiæ indicare bellum contra infideles, et invadere terras eorum, et propter hoc indulgentiam concedere, cum iura in contrarium disponere videantur, nam nihil ad nos de his qui foris sunt, ii, q. i, *multi*. Etiam quia origine possessiones et iurisdictiones sunt apud eos. Nam Deus per totam rationabilem creaturam hoc produxit, nam apud bonos

[4]

et malos facit solem oriri, Matthæi v et vi ad finem; etiam quia ad fidem cogendi non sunt, cum omnes alii non incorporati sint relinquendi arbitrio suo, xlv distinct., *de Iudæis*. Immo, quod plus est, dimitti potest infideli iurisdictione super conversos ad fidem, dummodo non nimis gravet, prima ad Timotheum, vi capitulo. Secundo loco, ut clare liqueat, est attendendum quod hic oportet primo præmittere quæ tetigi in materia represaliarum in principio, scilicet unde Ecclesia habuerit iurisdictionem, et etiam unde Imperator, quæ hic non præmitto quia ibi plene tactum fuit. Quo sic supposito, oportet etiam attendere quod in eadem civitate sub eodem rege sunt duo populi, et secundum duos populos duæ vitæ, et secundum duas vitas duo principatus, et secundum duos principatus duplex iurisdictionis ordo. Eadem civitas est ecclesia, unus Rex est Christus, duo populi sunt clerici et laici, duæ vitæ, spiritualis et carnalis, et duo principatus, Sacerdotium et Imperium, tamen unum est principale, scilicet Pontificatus. In quod fit alterius resolutio, alias frivole demonstraret Philosophus xii Metaphysicorum, concludens unitatem Creatoris, sic demonstrans; multitudo principatum, mala entia, volunt male disponi, unus ergo princeps, sic directe in proposito, etiam quia in quolibet entium genere est dare unum primum, quod sit metrum et mensura omnium aliorum, ut idem Philosophus. Sic in monarchia tota est devenire ad primum, ergo sic etiam in naturalibus est devenire ad primum movens immobile, ut idem Philosophus, Physicorum vii et viii. Tale non potest esse Imperium respectu Pontificatus. Prætermitto infinita. Sunt hæc allegabilia. Sufficiat ergo inferre quod unus est Dominus orbis, vii, q. i, *in apibus*; ix, q. iii, *cuncta per mundum*, et cap. *per principalem*; ff. Ad. leg. Rhod. de iact., l. *deprecatio*. Et iste est Papa. Et hic non solum super fideles, immo etiam super infideles habet iurisdictionem, quod luce clarius demonstratur, nam Christus super omnes habuit potestatem, unde in Psalmo: "Deus iudicium tuum regi da." Si Christus habuit, non fuisset diligens paterfamilias, si, Petro constituto vicario suo, curam non dimisisset, quod nefas est dicere. Etiam Petro tradidit claves regni cœlorum, dicens, "Quodcunque ligaveris, etc." Matthæi xvi. Et alibi, "Pasce oves meas," Iohannis ultimo. Sic igitur Papa de iure habet iurisdictionem super infideles, licet non de facto. Hinc est quod si gentilis, habens solum legem naturæ, peccat contra legem naturæ, puniri possit per Papam. Nam scribitur Genesis xix cap. quod Sodomitæ puniti sunt a Deo, ergo et Vicarius Dei hoc poterit. Idem etiam si colant idola, nam naturale est Creatorem colere et non creaturas. Item etiam poterit punire Iudæos, si faciant contra legem suam in moralibus, et non puniuntur a prælatis suis. De christianis non est dubium quin punire possit, si faciant contra legem evangelii. Ex quibus infertur quod Papa, tanquam verus Princeps, potest bellum indicare infidelibus, et indulgentias concedere propter recuperationem terræ sanctæ, et maxime terræ consecratæ nativitate Christi, habitatione et morte eiusdem, ubi non colitur Christus sed Mahometus. Item terra sancta victa fuit post mortem Christi iusto bello per Imperatorem Romanum, qui post spoliatus fuit per infideles. Idcirco licitum est Papæ recuperare ratione principatus quem obtinet. In aliis autem

terris quæ non sunt consecratæ, nec Imperium vel Ecclesia habuit iurisdictionem, de facto potest Papa facere præceptum quod non molestent christianos subditos. Alias potest eos per sententiam privare iurisdictione sua, et per hoc quæ, ut in pluribus tracta sunt de his, quæ notavit Innocentius, De voto, *quod super his*. Patet solutio ad primo quæsitum, scilicet de iustitia belli indicti ab Ecclesia contra infideles, ex quo infertur iustificatio belli indicti per Imperatorem contra hostes.

Evidentiale. Et discutitur qui sunt Imperatores contra quos bellum indicare liceat.

[Cap. xiii.]

Vbi sciendum est quod duo sunt populi, scilicet populus Romanus et extraneus. De populo Romano, primo sunt omnes qui in totum obediunt Imperio Romano, nam populus accipitur pro toto Imperio, ut lex Romana, Ad municipalem. Quidam non obediunt in totum, sed in aliquibus, ut quia vivunt legibus Imperii et fatentur ipsum dominum orbis, ut sunt civitates Lombardiæ, et similes, et isti sunt de populo Romano. Nam cum in aliquibus iurisdictionem exerceat, ut l. *si prius*, De aqua. pluv. arc. ; et ibi notandum. Quidam sunt populi qui nullo modo obediunt Imperatori, nec vivunt Imperii legibus, sed dicunt se hoc facere ex privilegio, ut sunt Veneti, quia asserunt se hoc facere ex privilegio. Et isti etiam sunt de populo Romano, qui præcario hoc tenent ab Imperatore, et ipse revocare potest quandocunque voluerit, ut l. *si quis in principio*, ff. De legat., iii. Præterea illud privilegium eis concessum debet esse accommodatum ut non priventur civilitate Romana, ff. De captivis, l. *in bello*, § *si quis servum*. Quidam sunt populi qui non obediunt Imperatori, et asserunt hoc sibi competere ex contractu, ut sunt provinciæ subditæ Romanæ Ecclesiæ, quæ asserunt sibi competere ex donatione Constantini et aliorum Imperatorum, et isti etiam sunt de populo Romano, nam Ecclesia ibi exercet iurisdictionem quam habebat Imperium, unde non desinunt propterea esse cives Romani. Idem dico de regibus qui non fatentur se subditos Imperatori, ut rex Franciæ, Angliæ, Hispaniæ, et similes, qui asserunt hoc sibi competere ex privilegio vel præscriptione. Et per hoc infero quod omnes gentes fere quæ obediunt sanctæ matri Ecclesiæ sunt de populo Romano, et si quis diceret Imperatorem non esse dominum, diceret contra textum Evangelii, cum dicitur "exiit edictum a Cæsare Augusto, etc." Popul^{us} autem extranei sunt qui non fatentur Imperatorem dominum, ut Græci, qui dicunt suum Imperatorem esse Dominum. Item Tartari, qui dicunt Grancanem esse dominum, et Saraceni qui dicunt suum esse dominum. Inter istos tamen est differentia, nam quidam sunt nobis foederati, ut Græci contra Turcos, quidam cum quibus habemus pacem, ut sunt Tartari, nam mercatores nostri vadunt ad illos et sui ad nos, quidam sunt cum quibus nihil facere habemus ut Iudæi, quidam sunt cum quibus habemus guerram actualem ut sunt Saraceni, et hodie, cum Turcis. Infertur ergo quod, cum Imperator sit princeps sæcularis, superiorem non habens in sæcularibus, nisi forte, ut

dixi, quod ipse potest indicare bellum contra hostes suos, et qui sint, post statim patuit. Et hoc est bellum de quo loquitur lex *hostes*, ff. De captivis ; et De verbor. significatione. Et in hoc vindicat sibi locum bellum, ergo indicitur a populo Romano vel Imperatore, adeo quod, si Imperator indicat bellum aliquibus civitatibus Italiae rebellibus, vindicat sibi locum effectus publici belli, quia idem si repugnetur Officiali Imperatoris, vel Papæ, non propter Imperatorem vel Papam.

[Cap. xiv.]

An aliis a principe bellum indicare liceat universale?

Et quæro numquid aliis a principe liceat bellum indicare universale. Solutio. Non licet sine principis auctoritate, nam nemini sine principis licentia licet arma portare, C. Vt usus armorum, in rubro ; et glossa in Authent., De mand. princ., coll. iii ; in Authent., De armis, coll. vi. Et est ratio, nam nemini sine principis licentia licet violare iura principum. Ius autem violat qui, sine iuris sollemnitate manu regia, ius sibi dicit, ubi habeatur copia ius dicentis, idcirco sine eius auctoritate non licet. Soli ergo Principi competit sua auctoritate, cum non habeat superiorem, ad quem recurrat pro iustitia consequenda. Hodie tamen quia sunt populi non recognoscentes superiorem de facto, non requiritur superioris auctoritas, cum non recognoscant. Immo tota die bella indicuntur a populo contra populum, nullo alio requisito.

[Cap. xv.]

An bellum motum per Imperatorem contra Ecclesiam sit iustum, et an teneantur subditi ei in hoc obtemperare?

Secundo quæritur numquid bellum quod movet Imperator contra Ecclesiam sit iustum, et teneantur subditi ei in hoc obtemperare. Videtur quod sic quia sit principis auctoritate vel mandato, ergo, etc. Etiam, quia duæ sunt iurisdictiones, De iudiciis, *novit* ; Qui filii sint legitimi, *causam*, et cap. *per venerabilem* ; De appell., *si duobus*. Etiam quia in pertinentibus ad armorum usum subditi tenentur obedire Imperatori, etiam schismatico, [i] xi, q. iii, [Iulii] *Iulianus*. Solutio, contrarium est verum, nam Imperator est advocatus Ecclesiæ, et tenetur eam defendere, idcirco non potest eam impugnare, De natis ex libero ventre, cap. unico ; De restit. spol., *conquerente*. Immo indicendo bellum contra Ecclesiam meretur perdere privilegium indicendi bellum, cum illo abutatur, xi, q. iii, *privilegium* ; De decimis, *suggestum* ; ut puniatur in quo deliquit, De translatione, *quanto*, § *ne autem*. Immo talis pertinacia in Principe non distat ab hæresi, De hæreticis, *excommunicamus*, i, § i ; et ibi notandum. Etiam quia Papa superior est, nam examinat Imperatorem ipsum, reprobatur et deponit, De elect., *venerabilem* ; De re iudic., *ad apostolicæ*, lib. vi. In hoc igitur casu non tenentur subditi iuvare Imperatorem contra Ecclesiam, immo econtra. Et potest Papa absolvere eos a vinculo fidelitatis, xv, q. vi,

nos sanctorum, et cap. *iuratos* ; et nota De hæreticis, *excommunicamus* ; i, De pœnis, cap. ult. ; Et de hoc per Hostiensem, De resti. spoliatorum, *olim*.

Quid iuris, cum Papa movet bellum contra Imperatorem ?

[Cap. xvi.]

Quarto quæritur quid econtra si Papa indicat bellum contra Imperatorem ? Solutio patet per præcedentia, nam si Papa indicat bellum contra Imperatorem schismaticum, hæreticum, vel alias usurpantem iura et libertates ecclesiarum, omnes fideles tenentur iuvare Papam, et etiam vassalli Imperatoris possunt absolvi a iuramento quo tenentur, vel declarari non teneri, ut cap. *iuratos*, et cap. *nos sanctorum*, xv, q. vi.

De aggregantibus bellum, et ipsum perficientibus.

[Cap. xvii.]

Tertio restat videndum de aggregantibus bellum, et ipsum perficientibus, et quæ etiam in ipso fieri debeant.

De legione et cohorte, et qui et quot numero in eis requiruntur.

In bello sunt legio, et habet vii millia c pedites, et septingentos xix equites, sunt cohortes, et quælibet cohors xx alas. Milliaria habet pedites mille cv, equites cxxxv. Quinquagenaria habet quingentos quinquaginta quinque pedites, et equites lxvi. Ita notat glossa, ff. De his qui not. infam., l. ii. Hæc igitur et dux et ordo faciunt bellum, sumendo bellum pro multitudine apta et ad bellandum præparata, non autem pro actu bellandi. Duo tamen principaliter fundant bellum, scilicet arma et vires. Hæc dividuntur in tres partes, equites, pedites, et classes. Nam equitibus campi, classibus maria et flumina peditibus colles, urbes, plana abrupta, servantur. Hinc infertur quod pedites magis sunt necessarii reipublicæ quam equites, quia possunt undique prodesse.

Qualiter milites se debeant habere in bello, et cui obediant, et a quibus abstinere præcipiuntur ?

[Cap. xviii.]

Milites autem in bello sic se habere debent, ut servant iuramentum quod præstiterunt, nam iuraverunt se strenue omnia facturos quæ præceperit Imperator et nunquam deserturos militiam nec mortem recusaturos pro defensione reipublicæ, ut ff. Ex qui. caus. maiores, l. pæn. ; et C. De his qui non implet. stipend., l. i, lib. x. Eorum ducibus debent obedire, ut l. *collatores*, in principio. Nam cum a Republica amantur et aluntur, solis debent insistere utilitatibus publicis, et esse in numero militiæ, ut armorum quotidiano exercitio ad bella se præparent, ut l. *milites*, C. De re militari. Et sic debent ducibus

obtemperare quod, si contra præceptum eorum aliquid fecerint, etiam bene, nihilominus capite puniuntur, ff. De re milit., l. *desertorem*, § *in bello*. Abstinere debent ab agrorum cultura, animalium custodia, mercimoniorum quæstu. Aliena non peragant negotia, ad civiles curas non accedant, alioquin militia et eius privilegiis nudabuntur, C. De re milit., l. *nemo milites*, et l. *qui militares*; C. De locat. et cond., l. *milites*; C. De procur., l. *militem*. Non emant prædia ubi militant, et tempore quo militant, etiam nec alieno nomine, alioquin fisco vindicantur. Si tamen ante missionem non molestantur, post non inquietabuntur. Fallit illa regula ubi fiscus distrahat eorum bona paterna, et ubi ex hæreditate quærent. Hoc autem inductum est ne studio culturæ a militia avocentur. Hæc habentur ff. De re milit., l. *milites*.

[Cap. xix.]

Quæ pertineant ad officium ducis belli?

Ad ducem autem belli pertinet militibus parcissime commeatum dare, equos militares extra provinciam duci non permittere, milites in castris retinere, ad armorum exercitationem producere, ad opus privatum, piscatum, venatum, non mittere, claves portarum suscipere, vigilias circumire, frumentationibus commilitonum interesse, frumentum probare, mensuræ fraudem coercere, delicta castigare, querelas commilitonum audire, valetudinarios inspicere. Hæc habentur in l. *officium*, ff. De re militari. Ad eius etiam pertinet officium in virentes fluminis ripas legionem ponere, et ut nullus omnino aquam fluminis polluat, neve abluendo equorum sudorem publicos oculos maculet, sed procul in inferioribus partibus fluminis id facere permittat. Hæc habentur C. De re milit., l. *ingentis*. Ad ipsius etiam officium pertinet castra ponere ubi lignorum, pabuli, aquæ copia habetur, et, ut diutius commorandum sit, loci salubritas eligatur, ne mari sit vicinus, aut altior locus qui ab adversariis captus possit efficere. Considerandum etiam ne torrentibus inundari consueverit campus. Hæc Vegetius, De re milit., lib. i, cap. xx. Ad eius etiam officium pertinet secundum numerum militum munire castra, ne maior multitudo constipetur, neve paucitas in latioribus ultra quam oportet cogatur extendi. Ad bonum etiam ducem pertinet locum in quo dimicandum est noscere, qui quanto superior fuerit utilior iudicatur. Quod si victoriam de peditibus sperat contra milites hostium, loca inæqualia, aspera, montuosa debet eligere, si autem econtra, loca plana, patentia, neque silvis neque paludibus impedita. Hæc Vegetius lib. iii, cap. xiii, De re militari. Ad officium ducis pertinet de contractibus et delictis militum cognoscere, quod etiam pertinet ad specialem magistrum militum, ut l. *magisteriæ*, C. De iurisd. omn. iudic.; et l. *tam collatores*, C. De re militari.

Qualiter varie puniuntur milites prout varie delinquant?

[Cap. xx.]

Varie autem puniuntur milites ut varie delinquant. Nam aut committunt delicta propria aut communia. Et in propriis puniuntur poena militari, et augetur poena gradu sæpe militiæ, ut l. ii, ff. De re militari. Punitiones autem sunt pecuniaria castigatio, munerum interdictio, ignominiosa de exercitu missio, gradus deiectio. In metallum autem, vel opus metalli, non deputantur, sed decapitantur, non enim pro milite sed pro hoste reputatur, ff. De re milit., l. iii, § i et § *is qui*, et l. *proditores*. Capite autem puniuntur qui præposito manus intulerint, qui inobedientes fuerint, qui spectantibus ceteris prior fugam arripuerit, exploratores qui secreta nuntiant hostibus, caligatus qui metu hostium infirmitatem simulavit, qui commilitonem gladio vulneravit, qui sine causa se vulneravit, vel mortem sibi conscivit. Secus si vitæ tædio, vel doloris impatientia, nam tales infamia notantur, per vinum autem vel lasciviam lapsis militia mutatur. Qui non defendit præpositum suum, cum potuit, capite punitur. Ei qui non potuit parcitur. Hæc habentur ff. De re milit., l. *omne delictum*, et l. iii, § fin. Item qui explorationi obviavit, hostibus insistentibus, aut qui de fossato recedit, capite punitur, etiam si rem bene gesserit, ff. De re milit., l. iii. Item miles turbator pacis capite punitur, ff. De re milit., l. iii. Item si concitavit atrocem seditionem. Desertor tempore belli capite punitur, tempore pacis equitis gradu repellitur, pedes militiam mutat, ff. De re milit., l. *non omnes*. Non omnes tamen desertores puniendi sunt æqualiter, sed haberi debet ratio gradus, ordinis, stipendiorum, et aliarum circumstantiarum. Qui excessit spatium commeatus, ut emansor vel desertor reputatur. Habetur tamen ratio dierum quibus tardius vel citius rediit, vel si impedimento aliquo detentus, ff. De re milit., l. iii, § fin., et l. *qui commeatus*, et l. *non omnes*. Habetur etiam ratio ante actæ vitæ. Emansor est qui diu vagatus a castris ad ipsa rediit, desertor qui per prolixum tempus vagatus ad castra reducit, ut l. iii, § *emansor*, ff. eod. titulo. Desertor, si in urbe inveniatur, capite punitur, alibi si ex prima desertione captus iterato deserat, capite punitur, ff. eod. tit., l. *non omnes*. Desertorum defunctorum bona confiscantur, C. De re milit., l. iv.

De fortitudine, et ipsius natura, et quæ fortitudo dicatur moralis, et quæ non, et quæ fortitudo bellum ducat ad finem rectum, et quæ non. [Cap. xxi.]

Sed quia dictum est quod fortitudo et arma fundant bellum principaliter, et quia in iure non discutitur natura fortitudinis explicite, expedit quod ipsius natura aliququaliter explicetur. Et quæro primo an fortitudo sit virtus moralis, et apparet quod non. Nam fortitudo est dispositio corporalis, ut l. i, C. De athleticis, lib. xi; ff. De his qui not. infam., l. *athletæ*; ff. Ad leg. Aquil., l. *qua actione*, § *si quis in colluctatione*; De pugn. in duello, per totum; C. De gladiatoribus, l. una; De torneamentis, per totum. Ergo non est virtus moralis, cum dispositio corporalis differat ab habitu seu dispositione animæ, et ipsa sit inferior gradu, De poen. et rem., *cum infirmitas*; xii, q. i, *præcipimus*; xxiv,

q. iii, *si habes* ; C. De sacrosanctis eccles., l. *sancimus*. Secundo sic. Omnis virtus moralis est coniectatrix in passionibus et operationibus, ut probat Philosophus, ii Ethicorum. Sed fortitudo est coniectatrix in medio, ut idem Philosophus, iii Ethicorum. Tertio sic. Quod non est una virtus, non est virtus, immo virtutes, quia pluralis locutio ad minus duorum numero est contenta, ff. De testi., l. *ubi numerus* ; causa iv, q. iii, *ubi numerus* ; et regula *pluralis*, De reg. iur., lib. vi. Et confirmatur per dictum Philosophum, primo Elenchorum, nam eadem est definitio præpositionis et unius præpositionis, sed fortitudo non est una virtus. Probatur hæc minor. Nam una virtus opponitur duobus vitiis extremis, ut xli di., *sæpe* ; De consuetudine, *ex parte*. Sed fortitudini opponuntur quatuor extrema, scilicet intimiditas et timiditas, timor et audacia, et defectus in audendo, qui est innominatus, ut probat textus iii Ethicorum. Oppositum probat Philosophus, iii Ethicorum. Pro solutione quæstionis est advertendum quod fortitudo sumitur æquivoce pro fortitudine, quæ idem est quod robur corporis, et fortitudine, quæ est virtus moralis. Prima est potentia qua quis potest movere, ut probat Philosophus, primo Rhetoricorum, et utraque requiritur in bello, et sic sumpta fuit generaliter, cum dixi quod fortitudo, seu vires et arma, fundant bellum, cum utraque requiratur. Sed de prima, quæ est robur corporis, non est dubium quod non est virtus moralis, per supra allegata, sed de secunda procedit quæstio, et illa est virtus secundum quam nos bene habemus circa timorem et audaciam in bellicis periculis. Et de ista prosequamur, quia prima est plana lippis et tonsoribus. Pro intellectu autem fortitudinis animæ, est attendendum quod in audendo et timendo contingit excedere et deficere, et utrobique male agere. Contingit et medie se habere, et sic virtuose. Differt tamen audacia a timore, nam audacia est passio appetitus irascibilis, secundum quem inclinamur ad aggrediendum terribilia. Timor inclinat ad fugiendum, ut quilibet experitur in seipso, sed utrumque contingit bene agere et male, nam si quis videret x armatos et solus aggrediretur eos, male ageret, et si non fugeret male ageret, et sic male, circa aggressuram, et male, circa timorem. Sic etiam in timendo quis excedere potest, ut ecce si sunt centum homines in castro, et non videant nisi centum, si fugiant, male agunt. Sic etiam non aggrediendo, ut si viderint spoliari civitatem, si non aggrediantur, male agunt. Sic vides excessum in non timendo cum expedit, in timendo cum non expedit, in aggrediendo cum non expedit, et non aggrediendo cum expedit, et sic habes vitia extrema, audaciam et timorem, et utrobique gradum ut supra. Vltterius est notandum quod ubicunque est reperire excessum extremorum vitiosum et vituperabilem, ibi est reperire medium bonum et laudabilem, quia si totum esset malum et vituperabilem, non posset dici quod defectus est vituperabilis, nam defectus diceretur defectus mali, et sic non foret malum. Expedit igitur quod in medio sit bonum cuius respectu unum dicatur malum excedendo, aliud deficiendo. Ex his inferuntur duæ conclusiones pro solutione quæstionis. Prima, quod fortitudo animæ est virtus moralis. Secunda, quod est una virtus. Probatur prima, nam omnis habitus electivus medii laudabilis est virtus moralis. Forti-

tudo est huiusmodi, ergo probatur maior per locum a definitione, quæ argumentatio est valida in iure, ff. De reg. iur., l. *omnis definitio*; ff. Depositi, l. i in prin., et l. *bona fides*, eod. titulo. Sic autem definit Philosophus virtutem moralem, ii Ethicorum. Probatur minor, nam fortitudo est habitus electivus medii circa timorem et audaciam, ut probat idem Philosophus, iv Ethicorum. Confirmatur. Illa est virtus moralis quæ generatur in nobis ex more, id est consuetudine, et hinc appellatur moralis. Fortitudo est huiusmodi, ergo probatur maior per locum a causa formali, quæ argumentatio est valida in iure, ff. Ad leg. Falc., l. *si is qui quadringenta*, § *quædam*; ff. Locati^o, l. *rei*, § *opere*; ff. De verborum sign., l. *ædificia*, § *perfecisse*, et l. *quæ forma*^o, eod. tit.; i, q. i, *detrahe*; De bapt., *debitum*. Probatur minor. Nam, in actu bellico propter pericula, appetitus sensitivus inclinat hominem ad fugam, ut dicit Philosophus, ubi in bellicis vindicat sibi locum ira, quæ est impetuosa et sic nos inclinat ad extrema vitiosa. Virtus autem, quæ est promptitudo appetitus rationalis, inclinat ad medium, et illa promptitudo generatur ex actibus iteratis, alias non delectabiliter operaremur, et sic non esset virtus, cum in virtuoso nulla debeat esse appetituum repugnantia, ut idem Philosophus, ii Ethicorum. Et sic patet prima conclusio, videlicet quod est virtus moralis. Secunda conclusio est quod est una virtus. Quidam hoc sic probant, timor et audacia sunt passionες contrariæ, fortitudo est virtus media, ergo est tantum una. Consequentia probatur. Nam unumquodque agens, intendens ad augmentum unius contrariorum, tendit ad remissionem alterius. Et sic virtus minuens timorem auget contrarium, et econtra. Confirmatur. Virtutes morales fortificantur a fine, sed unicus est finis, ergo unica est virtus. Primum patet per locum a causa finali, quod est validum argumentum in iure, l. *unius*, § *si servus*, ff. De quæstionibus, l. ult.; ff. De decur., l. *generaliter*; C. De episc. et cleric.; causa xvi, q. i; et cap. *cum cessante*, De appell.; et cap. *etsi Christus*, De iureiurando. Patet secundum. Nam finis fortitudinis in bellicis est bonum commune. Et si aliquis bellat propter lucrum, non est fortis, immo avarus. Alii dicunt aliter, videlicet quod timor et audacia non sunt passionες contrariæ. Hoc probant sic. Timor et audacia se compatiuntur in eodem respectu eiusdem, ergo non sunt contraria. Tenet consequentia, quia, posito uno contrariorum, removetur reliquum, ff. De instit., l. *sed si pupillus*, § *si institoria*; ff. De reg. iur., l. *ius nostrum*; l. *hæc verba*, De verb. sig.; in Authent., De mand. princ., coll. iii; xxxii di., *hospitiolum*, cum similibus. Primum patet. Nam quis propter bonum honestum vult bellare, sed timet propter Deum, etiam quis aggreditur, et sic audacia, et tamen timet ne lædatur, et sic timor. Ista opinio est contra textum Philosophi, ii Rhetoricorum, nec valet ipsorum ratio, nam delectatio et tristitia secundum omnes sunt contraria, et tamen idem delectari potest et tristari circa eundem actum. Tolle in adulterio delectatur quis propter sensualitatem, sed tristatur propter inhonestatem. Sic de proiciente merces in mari propter tempestatem, sic in proposito quis timet propter malum præsens, audet propter spem. Prima igitur opinio verior, unde Albertus tenet quod licet sint quatuor extrema, ut

supra, tamen non sunt nisi duplicis moris. Nam quicumque inclinatur ad bene audendum non timet, et quicumque non inclinatur ad bene timendum non audet, et sic infert unicam virtutem. Alii dicunt quod non sunt nisi duo extrema, nam si aliquis nihil timet, nimis audet, et sic timor et audacia sic faciunt unum extremum. Sufficiat ex prædictis concludere quod fortitudo, quæ est unum principale fundans bellum, ut sumitur pro corporis robore, non est virtus moralis, sed, ut sumitur pro virtute animæ, est virtus moralis, et una, et hæc est illa quæ bellum ad finem rectum perducit.

[Cap. xxii.]

An fortitudo sit virtus cardinalis.

Visum est de fortitudine quæ fundat bellum principaliter, quæ est virtus moralis et una. Sed quia hunc tractatum dirigo ad Cardinalem, quæro utrum hæc sit cardinalis. Apparet quod non, nam magnanimitas non est virtus cardinalis, ergo nec fortitudo. Tenet consequentia per locum a maiori, qui est validus in iure, ut l. i, C. De neg. gest.; ff. De senatoribus, l. *qui indignus*; C. De sacrosanctis eccles., Authent., *multo magis*; ff. Sol. matrim., l. *ex diverso*, § i; C. De epi. et cle., l. *si qua per calumniam*; xxxii, q. v, *si Paulus*; viii, q. i, *si ergo*; vi, q. i, *imitare*; xl di., *qualibet*; De elect., *cum in cunctis*. Sed magis videtur inesse quod magnanimitas sit virtus moralis quam fortitudo, quia nobilior et maior, ut dicit Philosophus in Ethicis, tractatu de magnanimitate. Patet primum, videlicet, quod magnanimitas non sit cardinalis, quia tunc cardinales forent plures quatuor. Solutio sic. Tota humana conversatio non versatur circa fortitudinem, ut cardinem, ergo non est cardinalis, quia inde cardinalis nuncupatur. Tenet consequentia per locum ab etymologia, qui est validus in iure, ff. De rebus creditis, l. ii, § *appellata*; in proœmio ff., § *discipuli*; C. De episc. et cler., l. *decernimus*; ff. De verb. sig., l. *tugurii*, l. *tugurium*⁽ⁿ⁾, eod. tit.; ff. De legatis iii, l. *librorum*, § *quod si papyrus*; xxi di., *cleros*; xvi, q. i, *si cupis*; et cap. *cum secundum*, De præbendis. Patet primum. Nam fortitudo versatur solum circa pericula bellica, sed pauci ducunt vitam suam cum bellicis periculis. Ergo. In contrarium apparet auctoritate communiter loquentium, qui istam ponunt in numero cardinalium, inter quos est Seneca, qui fecit tractatum specialem, et Tullius in Rhetoricis dividebat virtutem in has quatuor, ut cardinales. Et hæc argumentatio ab auctoritate est valida in iure, C. De sum. trinit. et fid. cathol., Epistola, *inter claras*; C. De bonis quæ liber., l. *cum multa*; ff. De rer. div., l. *in tantum*, § *cenotaphium*.

[Cap. xxiii.]

Vnde et qualiter quatuor principales virtutes dicantur cardinales?

Pro evidentia et solutione quæstionis, primo est videndum unde et qualiter virtutes dicantur cardinales. Vbi sciendum quod, secundum Albertum, quod, sicut cardines cœli sunt poli antarcticus et arcticus, super quibus movetur



coelum, et cardines ostiorum et portarum super quibus revolvuntur, sic, a simili, virtutes illæ dicuntur cardinales, super quibus versatur tota conversatio humana, et quas si quis habet, dicitur simpliciter bonus, et sine ipsis, non. Sic etiam domini Cardinales inde, iudicio meo, nomen sumpserunt, nam ipsi sunt mundi cardines, super quibus tota mundi gubernatio revolvitur et fingitur, et ad ipsos spectat sustentare totum pondus mobilis gubernationis, et motui ipsius fixum præstare fomentum. Duobus polis numero contenta est cœlestis natura, et sufficiunt, stabiles sunt, et immobiles firmant ordinem motus, non deviant a loco fixationis humani generis. Monastica gubernatio quatuor cardinibus fuit contenta, et sufficit. Si inde unde numerus, unde varietas, unde infirmitas, unde tanta a centro distantia, attentata causa, non est nomen arbitrii, tamen libertas causæ posset fingere modum. Sed quia de cardinalatu dixi in tractatu De Ecclesiastica Censura, nunc pertranseo, sed redeo ut discutiam principale propositum. Et quia iure, ut dixi, non bene ad plenum explicatur natura virtutum moralium cardinalium, aliquantulum et succincte, propter fortitudinem explicandam, de ea tractabo.

Quid sit virtus ?

Sciendum est quod, ut dicit Philosophus, virtus est habitus electivus, et ut idem Philosophus asserit, ii Rhetoricæ, omne quod est cadit sub electione, sed eligibile est triplex.

De triplici specie boni, et qualiter virtutes cardinales a bono eliciuntur.

[Cap. xxiv.]

Bonum utile, bonum delectabile, et bonum honestum, et ista bona sunt per electionem appetibilia et fugibilia, et omnes virtutes morales circa ista tria versantur. Explicemus unumquodque. Et primo bonum utile, circa quod versatur virtus altero de tribus modis, aut expendendo, aut accipiendo, aut conservando. Plures actus electivos non experitur homo in seipso, et ista deductio ab experientia est valida in iure, ut probatur in proœmio ff., circa princ. ; in Authent., De monachis, circa fin. col. i ; ff. De legat. iii, l. *si chorus*, § *his verbis* ; C. De vet. iure enucl., l. ii, § *quæ omnia* ; De elec., *quam sit*, Lib. VI. Si expendendo, hoc contingit dupliciter, aut enim expendit sua aut aliena. Si expendit sua, tunc circa ista expendendo versatur virtus liberalitatis et magnificentiae, et vitia opposita, scilicet, avaritia et prodigalitas, parvicentia et vannasia. Si autem non sint sua, tunc potest distribuere illis quorum sunt, et tunc est iustitia, ut ff. De iust. et iur., l. *iustitia* ; et Instit., eod. tit., § *iustitia* ; xii, q. ii, *cum devotissimam* ; aut distribuit illis quorum non sunt, et tunc est iniustitia, ut iuribus statim allegatis, a contrario, quod est validum argumentum, ut l. i, § *huius rei*, ff. De offi. eius cui mand. est iurisdictio ; l. *si per procuratorem*, § *ignorantes*, ff. Mand. ; et cap. *cum apostolica*, De his quæ fi. a prælat. ; et cap. *cum virum*, De conversione coniugatorum. In non reddendo

his quorum sunt, homo dicitur simpliciter malus, xiv, q. vi, *si res* ; De usuris, *cum tu* ; ff. De usurp., l. *sequitur*, § [*cum*] *quod autem*. Patet quod iustitia est cardinalis, quia non habendo ipsam circa distributionem eorum quæ sua non sunt, homo est simpliciter malus, sed liberalitas et magnificentia, quæ consistunt circa distributionem eorum quæ sua sunt, non sunt cardinales, quia quis male distribuendo sua, non est simpliciter malus, sed bene diceretur fatuus, et sic habes unam cardinalem, scilicet, iustitiam, circa expeditionem utilis boni. Si autem virtus moralis versetur circa bonum utile in accipiendo, hoc contingit dupliciter. Nam aut accipit quæ sua sunt, vel debita, aut aliena, et sibi non debita. Si sua, vel sibi debita, et a quibus non debet, peccat contra liberalitatem et magnificentiam, non tamen est simpliciter malus. Si autem accipiat aliena, talis est simpliciter malus. Hinc est quod contra talem sunt iuris remedia, ut interdicta, Vnde vi bon. rapt., ut ff. et C., per illos titulos Furti, et conditiones ex legibus et canonibus quæ in singulis casibus explicantur secundum varietatem actuum. Et sic per explicationem huius secundi actus, scilicet, acceptionis circa bonum utile, apparet quod iustitia obtinet cardinalatum, non autem liberalitas sive magnificentia, cum, per oppositum iustitiæ, dicatur simpliciter malus, non autem per oppositum liberalitatis vel magnificentiæ. Si autem versetur virtus moralis in retinendo bonum utile, hoc etiam contingit dupliciter, aut retinet et conservat sua, aut retinet aliena. Primo casu retinendo quæ sua sunt, et nulli dando, peccat contra liberalitatem et magnificentiam, nec talis est simpliciter malus, et si instes, si dives videat pauperem et indigentem et ad mortem, et nihil det, peccat mortaliter. Responderi potest quod tunc retinet non proprium sed commune, cum tempore talis necessitatis sit fienda communio, ut probat Clemens vi rationibus, xii, q. i, *dilectissimis*, et Augustinus, ut transumitur viii di., *quo iure*, et § i. Si autem quis retinet aliena, simpliciter est malus, et iniustus appellatur, si invito domino retineat, et remedia iuris sunt prodita, de quibus supra. Circa igitur bonum utile, elicis unam solam virtutem cardinalem, tam in distribuendo, quam accipiendo, quam conservando, quia per ipsius oppositum homo est simpliciter malus. Cardinalis est iustitia, non cardinales sunt liberalitas et magnificentia, et hoc clarum.

Dicebam secundo quod erat secundum bonum delectabile, circa quod versatur virtus moralis, et circa hoc versatur dupliciter, aut largiendo aut accipiendo. Si largiendo, sic sunt virtutes quæ sunt in ludis, ut cum aliquis largitur aliis, habet delectationem. Et huiusmodi sunt amicitia, affabilitas, et eutrapelia. Istæ autem virtutes non sunt cardinales, quia non sunt de necessitate humanæ naturæ, quia multi sunt magni et virtuosus qui in talibus nesciunt se bene habere. Si autem suscipiendo, et hoc dupliciter, aut enim versatur principaliter circa delectabile, tunc dicitur simpliciter malus, et appellatur intemperantia, et dico se male habere excedendo, nam insensibilis, qui non delectatur, non est simpliciter malus, sed excedens, et sic habes temperantiam quæ obtinet cardinalatum, quia per eius oppositum quis est simpliciter malus, et est de necessitate humanæ conservationis. Si autem versetur simpliciter circa tristabile, et hoc dupliciter, nam est quoddam tristabile quod aptum est

movere ad iram, et tunc versatur mansuetudo, hæc non est cardinalis, quia non est necessarium quod quis irascatur, sed per actum remittitur quominus transeat ad actum secundum exteriorem iniustitiæ. Si autem transiret ad actum exteriorem, tunc diceretur iniustitia. Si autem est tristabile, quod aptum est movere ad timorem, tunc est fortitudo. Nam, sicut ille est simpliciter malus qui non vult sustinere terribile propter bonum virtutis, et sic fortitudo est virtus cardinalis, et hoc de bono delectabili.

Dicebam ulterius quod erat tertium bonum, scilicet, honestum, et tale est triplex. Quoddam pertinet ad virtutem cognoscitivam, et hæc sunt virtutes intellectuales, et hæc sunt scientia, sapientia, intellectus, ars, et prudentia. Quoddam pertinet ad virtutem interpretativam, ut veracitas et falsitas. Quoddam pertinet ad artem appetitivam.

Capiamus secundum membrum, scilicet pertinens ad virtutem interpretativam, et dico quod ista veracitas spectans ad virtutem interpretativam non est virtus cardinalis, quia non reddit hominem simpliciter bonum, nec eius vitium simpliciter malum. Vitium enim magis oppositum est iactantia. Sed iactator est triplex, est enim iactator simplex, et iste est gratia delectationis, alter gratia honoris, alter gratia lucri. Sola prima iactantia opponitur directe veracitati, aliæ autem ingrediuntur aliam speciem vitii. Nam primus solum peccat quia est mendax, sed mendacium est duplex, nam est mendacium quod est simplex falsa significatio vocis, et de illo dixi quod directe opponitur veracitati. Aliud est falsa significatio vocis, cum intentione fallendi, et illud facit simpliciter hominem malum, et incidit in speciem iniustitiæ. Et has et alias species mendaciorum prosequitur Augustinus in libro De Mendacio. Transumptive habetur xxii, q. ii, cap. *primum capitale*. Aliud est, ut dixi, bonum honestum pertinens ad virtutem appetitivam. Et hoc dupliciter. Aut essentialiter, et talia sunt virtutes morales de quibus supra tactum est. Aut significative, et talia sunt laus, bona terrena, et circa istud bonum honestum est magnanimitas et philominia⁽⁷⁾, et tales non sunt virtutes cardinales. Nam etiam multi sunt virtuosus qui non appetunt honores quibus sunt digni. Si autem loquamur de bono honesto quod spectat ad virtutem cognoscitivam, tunc sunt virtutes intellectuales, ut scientia, intellectus, ars, prudentia. Primæ tres non sunt cardinales, quia non sunt de necessitate vitæ humanæ, sed prudentia est de necessitate boni. Immo impossibile est aliquem esse virtuosum sine prudentia. Nam prudentia regulat ceteras virtutes.

Ex his infertur qualiter fortitudo, propter quam fit sermo, est virtus cardinalis. Et apparet qualiter sunt quatuor, elicite ex triplici bono appetibili et fugibili, et triplici virtute animæ meæ, scilicet, iustitia, temperantia, fortitudo, et prudentia, quæ, nedum cardinalis, immo inter ceteras obtinet papatum et principatum.

Fuit aliquis discursio, sed sim supportatus, quia non reputavi propter iuristas, nec aliter, explicare naturam fortitudinis, de qua est principalis sermo.

[Cap. xxv.]

Quomodo et qualiter quis possit dici fortis in bello.

Consequenter quæritur an aliquis possit dici fortis, etiam si non fuerit exercitatus circa pericula mortis in bello. Apparet quod sic, nam fortitudo est necessaria bonitati humanæ, cum sit cardinalis, ut supra proxima quæstione, quæ bonitas humana haberi potest sine exercitio bellico. Ergo consequentia probatur per locum a coniunctis, ut ff. De neg. gest., l. *atqui natura*; iv di., *denique*; vi di., *nunc de superfluitate*. Primum patet per notata supra proxima quæstione. Item Tullius dicit quod fortitudo est considerata periculorum susceptio et laborum perpessio. Hoc autem potest esse sine bellico actu, ergo probatur consequentia per locum a consequenti destructo, quod est validum argumentum in iure, ff. De rebus creditis, l. ii, § ii; C. De furt., l. *apud antiquos*, ver. *quam*; ff. De in integr. restit., [nemo] *non videtur*. Oppositum dicit Philosophus, iv Ethicorum. Et propterea hoc continetur in sacramento militis, cum attingitur, scilicet, non evitare mortem, ut l. pæn., ff. Ex quibus causis maior.; et l. i, C. De his qui non imple. stip., lib. [xi] x. Pro solutione quæstionis est attendendum quod fortitudo sumitur generaliter pro omni firmitate animi, et hæc est generalis ad omnes virtutes, nam animi inconstantia vituperatur et a iure reprobat, xxxii, q. v, *horrendus*; De iureiurando, *quemadmodum*; ff. De adulteriis, l. *si uxor*; ff. De decur., l. p.; ff. De neg. gest., l. pæn.; regula *quod semel*, et regula *mutare*, De reg. iur., Lib. VI. Et hoc modo non foret dubium quin talis possit fortis esse sine periculo bellico. Sumitur etiam stricte prout virtus specialis, quæ est inclinans ad aggrediendum et expectandum pericula, pro fugiendo malo culpæ. Vnde triplex est malum, noxium quod opponitur utili, triste quod opponitur delectabili, culpa quod opponitur honesto. Bonum autem animæ quod est honestum est præferendum bono utili et delectabili, sicut anima rationalis præferenda est corpori, xii, q. i, *præcipimus*; xxiv, q. iii, *si habes*; C. De sacrosanctis ecclesiis, l. *sancimus*; De pœnit. et rem., *cum infirmitas*. Ex hoc infertur quod tres sunt virtutes morales necessariae ad hoc, ut quis dicatur bonus et virtuosus. Vna quæ præfigat animum ad præferendum bonum honestum utili, et hæc est iustitia, Instit. eodem, § *iustitia*; xii, q. ii, *cum devotissimam*. Alia firmans animum ad præferendum bonum honestum delectabili, et hæc est temperantia, ut vi di., *sed pensandum*, pal.; et De constit., *nam concupiscentiam*. Alia firmans animum ad sustinendum passiones magis quam incurrendum malum culpæ, et hæc est fortitudo, ut C. De athlet., l. una, lib. x; C. De his qui non implet. stip., l. i, eodem libro; vii, q. i, § *hinc etiam*. Et hæc est fortitudo de qua est sermo. Et merito hæc dicuntur cardinales, quia sunt de necessitate bonitatis humanæ, et quælibet istarum custodit seipsam et quamlibet aliarum. Tolle exemplum. Mulier temptata de adulterio per promissiones se defendit per temperantiam, ff. De rit. nup., l. *palam* ii. Si temptetur per terrorem, ista est fortitudo, xxxii, q. v, [Lucretiam] *proposito*, § *Lucretiam*, et [cap.] § [fieri] *non potest fieri* et [cap.] § *finge, de pudicitia*; xxxiv, q. i, *non satis*. Si autem temptetur per munera, ab ista se defendit per iustitiam, xii, q. ii, *cum devotissimam*. Potest etiam exemplari de fortitudine, nam si propter timorem se de-

fendit, dubitat⁷¹ ab ista se defendit per fortitudinem, ut in cap. [*Lucretiam*] *proposito*, et [cap.] § *finge, de pudicitia*, xxxii, q. v. Si temptatur propter delectabilia, tunc defendit temperantia, xxxii, q. v, *non potest*, et cap. *nec solo*, et cap. *qui viderit*, et cap. *non mæchaberis*. Si propter munera, tunc defendit iustitia, quia iniustum est vendere bonum honestum tanquam spirituale i, q. [i] ii, *quam pio*; De simonia, per totum. Si falsis rationibus, tunc defendit prudentia, et sic una cardinalium firmat animum, ut præferatur bonum honestum utili, ut iustitia, alia ut præferatur delectabili, ut temperantia, alia ad sustinendum tristia propter bonum tuendum et malum culpæ excludendum, ut fortitudo. Prudentia autem ceteras regulat, sic debet esse in cardinalibus.

Uterius est sciendum quod Bellum sumitur dupliciter.

[Cap. xxvi.]

Vno modo pro actu bellandi hinc inde, ut sumitur ff. De capt. et postlim. revers., l. *in bello*, et l. *postliminium*; C. De gladi., l. unica, lib. xi. Alio modo sumitur pro qualibet expectatione corporalis periculi, etiam si non sit actualis invasio, et hoc si periculum esset cui posset verisimiliter resisti, alias non esset bellum, ut in latrone suspendendo et alio iustitiando.

Si bellum capiatur pro actuali invasione hinc inde facta, fortitudo non est solum circa illa pericula, quia tunc non esset cardinalis, cum multi sint virtuosus qui non sunt in talibus exercitati. Si autem sumatur secundo modo, tunc fortitudo versatur circa illa pericula generaliter, sicut dicimus in muliere quæ sustinet pericula propter tuitionem castitatis. Ibi non est bellum primo modo sumptum, sed secundo sic, et tamen est fortitudo. Notandum tamen quod fortitudo non est circa quælibet pericula bellica. Nam, si aliquis invadat alium et defendat se, non est fortis, quia tunc canis esset fortis fortitudine. Sed quando sustinet pericula bellica propter evitare malum culpæ, tunc est fortis. Vnde dicit Philosophus quod non est fortis propter necessitatem, hinc etiam causa xxiii, q. iv, *Nabuchodonosor*, et cap. *de Tyriis*; De Pœnit., dist. ii, *sic enim*. Tunc concluditur solutio quæstionis propositæ cum quæritur an fortitudo sit circa pericula mortis et bellica, et dicendum quod non, ut exemplatum est in muliere. Secundo modo, quod extremus actus fortitudinis sit circa mortis pericula, dicendum quod sic, quia virtus est circa difficile. Tertio modo, quod inclinet ad sustinendum mortis periculum, si casus occurrat, et dicendum quod sic, quia virtus extenditur circa ultimum potentiæ, primo Cœli et Mundi.

Quis sit principalior actus fortitudinis in bello?

[Cap. xxvii.]

Sed quæritur quid sit principalius fortitudinis bellantium, an expectatio hostium, an aggressus eorum? Et videtur quod aggressus sit principalior actus fortitudinis. Primo, quia, ut inquit Philosophus, ii Ethicorum, tractatu de liberalitate, virtuosius est dare quam recipere. Scribitur etiam Ecclesiastici iv cap., "Non sit manus tua porrecta ad accipiendum, et ad dandum

collecta." Hinc est quod scribitur, " Beatius est dare quam accipere," xvi, q. i, *prædicator*; et De celebr. missar., *cum Marthæ*; De donat., cap. i. Ergo, a simili, virtuosius est aggredi quam exspectare, quia aggrediens dat, exspectans recipit. Præterea virtuosius est bene facere quam bene recipere, ut idem Philosophus. Probatur. Nam si melius est facere quam pati in genere virtutum, ergo bene facere melius quam bene pati. Consequentia tenet per locum a connexis, quod est validum argumentum in iure, ff. De neg. gest., l. *atqui natura*; iv dist., *denique*; vi dist., *quia de superfluitate*. Sed aggrediens bene dat, exspectans bene recipit, ergo virtuosius aggredi. Præterea melius est bene operari quam non operari turpe, iuxta illud non sufficit abstinere a malo, nisi et bonum faciamus, nam et illud, scilicet, bene operari bonum, meliorem ducit finem cum in actibus is finis ponderetur, et ab illo fiat denominatio. Consequentia tenet per locum a fine, qui est validus in iure, ut ff. De ritu nupt., l. *si quis*; ff. De iur.isci, l. *non intelligitur*, § *si quis palam*; ff. Communia præd., l. *receptum*; ff. De auro et arg. legat., l. *et si non sint*, § *perveniamus*. Sed aggredi est bene operari, exspectare est non operari turpe, id est non fugere, ergo virtuosius aggredi quam exspectare. Præterea id virtuosius est quod est difficilius. Nam et legis responsum aliter non emanat nisi super difficili et dubitabili, ut l. *quod Labeo*, ff. De Carbon. edicto; et l. i in fin., ff. Ad municipalem. Sed aggredi est difficilius quam exspectare, nam homo fessus exspectare potest, non autem aggredi. Probatur maior per eundem Philosophum, tractatu de fortitudine, nam actus fortitudinis specialiter est circa difficilia et terribilia. Præterea, illud virtuosius quod amabilius, nam actus virtutum de sui natura sunt amabiles, ut idem Philosophus, et probatur hoc De pœnit., dist. ii, *ergo*, et cap. *corpus*, et cap. *proximos*. Sed aggredi est amabilius. Quam plures utilitates affert reipublicæ, et plura in eodem genere prævalent paucioribus, in Authent., De consan. et uter. frat., in princ.; De sent. excom., *cum pro causa*; iii, q. iv, *Engeltrudam*; De offi. delegat., *prudentialiam*, in princ.; quia inimicos expellere est utilius quam ipsos exspectare. Præterea illud virtuosius quod est laudabilius, quia virtus moralis est bonum laudabile, sed aggredi est laudabilius quam exspectare. Nam regulariter plus laudantur aggredientes quam fugientes. In contrarium est textus Philosophi, iii Ethicorum, tractatu de fortitudine, ubi dicit quod principalior actus fortitudinis est sustinere. Idem tenet ibi Albertus et Custratius.

Pro evidentia huius quæstionis est advertendum quod secundum dictamen rectæ rationis non est semper aggrediendum, nec semper fugiendum, nec semper exspectandum, nam quandoque expedit aggredi, quandoque fugere, quandoque exspectare. Ex quo apparet quod fortitudinis triplex est actus, scilicet, aggressura, fuga, et exspectatio. Et quod aliquando fugiendum sit forti, patet ratione, nam pericula supra hominem sunt fugienda. Si enim unus solus vellet aggredi mille, vel ipsos aggredientes exspectare, non esset fortis, sed audax et temerarius, ut idem Philosophus ibidem. Triplex est ergo actus fortitudinis, scilicet, aggressus, fuga, et exspectatio. Et inter istos minimus est fuga. Hoc probatur. Nam ille actus est inter ceteros minimus qui inter

ceteros est minus difficilis, cum ars et disciplina sint circa difficilia. At fugere est facilius quam aggredi vel exspectare. Ergo. Præterea ille actus est minimus. Assimilatur vitio peiori. Probatur per locum ab extremis, qui est validus in iure, ff. Communi divid., l. *arbor*; et l. una, ff. Si quis ius dic. non obtemp.; et l. *quæritur*, ff. De stat. hominum. Sic est in proposito. Nam per fugam assimilatur timori, quod est peius vitium quam sit audacia, ut idem Philosophus, ibidem.

Secundo dico quod exspectatio est actus principalior. Hoc probatur, nam virtuosius est bene facere bonum quam bene recipere bonum. Ergo virtuosius est bene pati malum quam bene facere malum. Tenet consequentia per locum a contrariis, qui est validus in iure, ff. De act. emp., l. *Iulianus*, § *procurator*; ff. De instit., l. *sed si pupillus*, § *si institoria*; ff. De verb. sig., l. *hæc verba*. Sed aggrediens bene facit malum aggresso, exspectans autem bene recipit malum ab aggrediente. Præterea ille actus est principalior qui est difficilior. Hoc pluries supra probatum est. Sed exspectatio est difficilior quam aggressus. Probatur hoc. Nam si fiat aggressus, fit in modum fortioris, et cum spe de evadendo, alias recta ratio non dictaret aggressum, si non esset spes evasionis. Sed exspectatio fit in modum minus fortis erga fortiorum. Sed difficilior est bene se habere cum fortiori quam cum minus forti, ut claret. Confirmatur. Nam in exspectando oportet moderari timorem magnum cum tristitiis corporalibus. At aggrediendo non expedit tantum moderari timorem. Ergo.

Præterea exspectatio et sustinere denotant diuturnitatem et perseverantiam, et in genere boni quod diuturnius melius, De Pœnit., dist. iii, *irrisor*; De Pœnit., dist. ii, *pennata*, et cap. *non revertebantur*; ff. De in rem vers., l. *si pro patre*, § *et versum*. Sed aggressus denotat quendam impetum parum durabilem proveniente ab iracundia, ut l. *si adulterium*, § *imperator*, ff. De adulter.; et C. eod. tit., l. *Gracchus*; et regula *quod calore*, ff. De reg. iuris.

Præterea exspectatio facit pericula mortis esse præsentia, et illa tunc difficilia et timibilia, ut Philosophus, ii Rhetoricæ. Ergo.

Infertur igitur expectationem actum principaliorem fortitudinis, licet vulgares non recte iudicantes, contrarium sapiant. Si autem, quod prædixi, fugam actum⁶ fortitudinis [videtur] obstare, quod in hoc tractatu scripsi supra in articulo de pertinentibus ad ducem et milites, ubi dixi quod milites servare debent iuramentum quod iurarunt, non fugere, etc.

Solutio patet ex iam dictis, nam ubi sunt pericula supra hominem, fugiendum est, xxiii, q. iv, *displicet*, Iohannis viii, Matthæi x, transumptum, vii, q. i, § *hoc observandum*. Vbi autem sunt pericula non supra hominem, sed est aliqualis spes, tunc procedunt statim dicta. Ad allegata in contrarium patet responsum, discurrendo per singula, uno tamen addito, videlicet, quod vulgares plus laudant et amant aggredientes quam exspectantes. Hinc est quod dicit Philosophus ibidem, nihil prohibet milites stipendiarios in civitatibus utiliores esse quam viros fortes, nam illi ad modicum lucri vitam mutant, et

[6]

fugiunt et aggrediuntur sine dictamine rationis, viri autem fortes nec fugiunt nec aggrediuntur sine dictamine rationis.

Quot generibus fortitudinis quis utatur in bello?

Sed quæro, quot generibus fortitudinis utatur quis in bello? Solutio. Sex sunt similitudines veræ fortitudinis, quæ est virtus moralis sita inter audaciam et timorem, et istis sex utuntur milites in bellis.

Prima qua aliqui viriliter in bello aggrediuntur propter gloriam et honorem, videntes quod tales solent laudari, et timidi vituperari, et de hac C. De re milit., libro xii; ff. Ad leg. Aquil., l. *qua actione*, § *in colluctatione*; De pub. iudic., per totum.

Secunda quæ appellatur politica, qua aliqui sunt fortes propter timorem pœnæ corporalis vel pecuniariæ, quæ imponi consuevit timidis et fugientibus in bello, et ista vocatur politica, quia inter cives, et talis servilis est, De Pœnit., distinct. ii, § *sicut secta*.

Tertia est quæ vocatur militaris, qua homines sunt fortes, quia sciunt artes bellandi, sicut Teutonici et alii experti stipendiarii. Hanc inducit experientia, rerum magistra, ff. De leg. iii, l. *servis*, § *ornatricibus*; et cap. *quam sit*, De elect., Lib. VI; et, ut dicit Philosophus in tractatu De Fortitudine, stipendiarii pugnant cum aliis, sic armati cum inermibus. Et isti faciles sunt ad aggrediendum, et faciles ad fugiendum. Hodie tamen facilius se expediunt, quia levant digitum et trahunt barbutas⁽ⁿ⁾, et se reddunt, et statim dimittuntur, ut est mos eorum inter se.

Quarta est qua utuntur aliqui propter furorem, nam furor est res impetuosa ad pericula, et iste aliquando iuvat in bellis, quia homines sunt audaciores, et hanc inducit impetus iracundiæ, ut l. *si adulterium*, § *imperatores*, ff. De adulter.; et l. *Gracchus*, C. eodem titulo, et l. *quod calore*, ff. De reg. iuris.

Quinta, qua aliqui utuntur propter spem. Nam aliqui propter spem victoriæ viriliter aggrediuntur. Ibi enim præponderat spes potentiæ sensitivæ rationi, De constit., *nam concupiscentiam*; vi dist., *sed pensandum*.

Sexta est propter ignorantiam, nam aliqui aggrediuntur vel exspectant, ignorantes pericula quæ imminet, qui tamen fugerent hoc scito. Ibi non videt quid agat, ad instar infantis, C. De fals. mone., l. i; ff. Ad leg. Corn. de sica., l. *si infans*.

Istis fortitudinibus milites regulariter utuntur in bellis. Inter istas autem fortitudines, si vis videre quæ magis attingit virtuti, debes attendere quod omnes istæ sunt similitudinariæ fortitudinis veræ. Nam in vera fortitudine, sicut in qualibet virtute, oportet quod opus fiat scienter. Nam ignoranter operantium nulla est virtus, quia prudentia, quæ est habitus intellectus, regulare debet omne opus virtutis. Secundo, debet eligi. Tertio, quod eligatur propter bonum intrinsecum virtutis, non autem propter bonum extrinsecum.

Quarto, quod operetur firme et durabiliter. Quinto, quod delectabiliter. Sexto, quod opus debet esse difficile, nam ars sit circa difficilia. Hæc omnia requiruntur in vera fortitudine, circa aggressum, vel expectationem alicuius terribilis et difficilis. Per hoc patet quæ supra dictarum magis assimilatur veræ fortitudini, et quæ non. Nam omnes præter ultimam assimilantur in eo quod scienter, et sic ultima est minime similis in hoc, quod eligens. Aliæ conveniunt cum vera, præter illam quæ fit ex furore. In eo autem quod propter bonum intrinsecum, omnes deficiunt a vera, nam prima est propter bonum extrinsecum, utpote gloriam, alia propter fugam poenæ, alia propter lucra et stipendia, alia propter spem vincendi. Prima autem politica, quæ est propter honores et gloriam, magis assimilatur veræ propter finem honorabiliorem. Nam honores sunt significativi virtutum, et isti plus operantur, tendendo ad bonum publicum, nam viriliter bellis insistent, ut exemplat Philosophus de Hectore in bellicis sic se habente.

An fortis in bello potius debeat mortem exspectare quam fugere?

[Cap. xxviii.]

Tertio quæro, an fortis in bello aliquo casu magis debeat mortem exspectare quam fugere de bello, ubi per fugam evadere posset. Et videtur quod non sit mors exspectanda, nam illud magis eligendum quod est delectabilius, et illud minus quod minus, primo Rhetoricæ dictum est Philosophiæ. Sed est delectabilior vita quam mors, ergo eligibilius fugere et vivere quam exspectare et mori. Oppositum videtur dicere Philosophus, iv Ethicorum, tractatu de fortitudine, et iii, tractatu de voluntario et violento, et etiam tractatu de magnanimitate, ubi dicit quod prius est moriendum quam aliquid turpe committendum.

Solutio. Pro evidentia quæstionis est advertendum quod quæstio potest habere duplex fundamentum; unum veritatis et fidei, ut supponamus aliam vitam et beatitudinem. Et secundum hoc fundamentum quæstio non haberet grande dubium, nam si aliquis pugnaret contra infideles, et propter fugam suam multi perirent fideles, et solus salvaretur, tunc præeligenda esset exspectatio et mors. Et est ratio, nam fugiendo consequitur vitam corporalem, exspectando, moriendo corporaliter, consequitur vitam animæ, quæ est sine comparatione nobilior, ergo præeligenda.

Secundum fundamentum potest esse naturalium et viventium secundum legem naturæ, ut non supponatur ulterior vita, et tunc quæstio habet dubium et opiniones varias. Aliqui dicunt quod mors exspectanda contingere potest multipliciter. Vno modo, quod evidenter certum sit mortem evenire debere cum expectatione, nec spes sit de salute nisi cum fuga. Alio modo, quod licet sit aliqua evidentia mortis, tamen spes aliqua haberi potest de vita sine fuga. Isto secundo casu, dicunt intelligendas auctoritates Aristotelis et aliorum philosophorum, qui dicunt quod magis moriendum, id est, viriliter pugnandum. Primo autem casu dicunt nullo modo mortem exspectandam. Probant

hoc sic, nam de duobus malis minus malum est eligendum, xiii dist., *nervi*; et est principium in moralibus. Sed minus malum est fugere quam exspectare et mori. Quod sit minus malum probatur, nam illud est minus malum per quod pauciora bona perduntur quam illud per quod plura, sed in morte omnia tolluntur, in Authent., De nupt., § *deinceps*; et secundo Physicorum. In fuga perditur solum bonum fortitudinis moralis. Ergo. Præterea, si melius esset mori, hoc esset quia mori esset actus virtutis, sed hoc est falsum, nam actus virtutis vel est felicitas, vel ad actum felicitatis tendens. Sed mors est felicitatem destruens. Ergo. Præterea si hoc casu eligenda esset mors, hoc esset quia fortitudo, quæ est virtus moralis, ad hoc inclinaret. Sed hoc est falsum, nam virtus moralis non tendit ad corruptionem naturæ, immo ad conservationem ipsius. Nam ad hoc factæ sunt leges, iv dist., *factæ sunt*; sed mors tendit ad destructionem, in Authent., De nupt., § *deinceps*. Præterea, si hoc quis deberet magis eligere, aut foret propter bonum proprium aut alienum. Non propter proprium, quia in morte omne bonum exstinguitur, ut supra tactum est. Non alienum, quia non tantum bonum alteri potest quærere quantum sibi perdit, cum se plus aliis debeat diligere, ut l. *præses*, C. De servit. et aqua. Confirmatur. Nam secundum veritatem et fidem apparet quod virtuosissimi milites fugiebant in bello, ut tempore Caroli Magni.

Alii dicunt totum econtra, scilicet, quod potius exspectandum et moriendum quam fugiendum. Et hoc probant. Nam quilibet scit de necessitate se moriturum esse, si ergo moriatur fortis, non perdit nisi id in quo credit mortem præsentem differre a futura. Sed istæ non differunt in hoc quod est amittere bona virtutis et conservare, sed differunt in hoc quod est diutius retinere et minus diu. Tunc arguunt sic, illud eligibilius est in quo plura bona adquiruntur, et pauciora perduntur, sic est in proposito. Ergo. Probatur hæc minor. Nam si moriatur, quærit actum fortitudinis, qui est nobilissimus. Si fugit, nihil quærit, nisi continuationem prius habitorem donec duret vita, et sic quærit tempus. Confirmatur. Nam certum est quod consistentes circa delectationes corporales magis eligerent modico tempore vivere delectabiliter quam longo pœnaliter, ergo sic in delectationibus animæ hoc potius est eligendum.

Opinionem primam credo veram, nam, ut dixi in alio articulo, actus fortitudinis sunt aggressus, fuga, et exspectatio. Nam non semper insequendum, nec semper fugiendum, nec semper exspectandum, immo cum dictamine rationis.

[Cap. xxix.] *An miles una cum comitiva sua viriliter in hostes prorumpens, et ipsos totaliter confringens, contra mandatum ducis, sit capite puniendus?*

Quarto quæritur, pone dux exercitus mandavit ne quis prorumperet in hostes sub pœna capitis. Quidam strenuissimus miles, cum magna comitiva militum quibus præerat, contra mandatum ducis, prorupit in hostes, et ipsius strenuitate totaliter hostibus conflictum dedit. Quæritur an capite puniendus sit. Et videtur quod sic, nam dicit textus, in bello, qui rem prohibitam a duce

fecit, aut mandata non servat, capite punitur, etiam si rem bene gesserit, ff. De re militar., l. *desertorem*, § *in bello*. Probatur per iura quæ volunt astrictos obedientia ad ipsam teneri, ff. Mandati, l. *si remunerandi*, § *si [pignus] passus*^o, et l. *sed Proculus*; ff. Ad Macedon., l. *sed etsi*, § *ii*^o; ff. Ad leg. Aquil., l. *si servus servum*, § *et si puerum*; C. De neg. gest., l. ult.; cum similibus. Confirmatur. Nam malum non excusatur propter bonum quod sequitur, lvi dist., can. *undecunque*; De Pœnit., dist. i, *non sufficit*. Confirmatur. Nam facta non sunt ab eventu notanda, xv, q. i, *illa*, et cap. *non est*; xxiii, q. v, *de occidendis*; ff. De neg. gest., l. *sed an ultro*, § *i*; ff. Mand., l. *qui mutuum*, § *sumptus*; ff. De contraria tut., l. iii. Ergo ab hoc eventu insigni non fiet notatio, immo ab obedientia prævenienti.

In contrarium videtur. Nam propter peritiam et factum insigne effectualiter perpetratum remittitur pœna, quæ alias imponi deberet, aliquid attemptanti contra legem vel mandatum principis. Probat textus ff. De pœnis, l. *ad bestias*; xxii, q. ii, cap. *quæritur cur Patriarcha*.

Solutio. Audio quod dominus Ricardus Malumbra terminavit quod delinquens propter peritiam magnam pœnam evadit per dictam l. *ad bestias*; et induci poterat dictum cap. *quæritur cur Patriarcha*. Tamen illam opinionem non credo veram, immo aperte est contra textum l. *desertorem*, § *in bello*, ff. De re militari. Nec obstant iura in contra allegata, nam aliud est quem non incidere pœnam legis vel hominis, aliud est post pœnæ commissionem ipsam a principe remitti posse. Illa iura non probant quominus pœna committatur, sed bene probant ipsam a principe posse remitti, et sic supponunt illam commissam, ut probat uterque textus, si bene inspiciatur.

An duci belli capto sit venia concedenda?

[Cap. xxx.]

Quinto quæritur, pone dux belli capitur ab hostibus, numquid ei est venia concedenda an veniat puniendus? Et videtur quod venia sit concedenda per cap. *noli* in fin., xxiii, q. i. Ecce textus, "Sicut debellanti et resistenti violentia debetur, sic victo vel capto venia conceditur." Hoc probatur, nam dicit textus quod tenetur quis parcere hosti suo, ii, q. [vi] v, *quanto*, in fine. Ecce textus, "quia sicut in contumacia persistentibus severos nos esse convenit, sic humiliatis et pœnitentibus locum veniæ negare non debemus."

In contrarium videtur, nam captus efficitur servus hostium, ut l. *hostes*, et l. *hostes*, ff. De captivis et ff. De verb. significatione.

Solutio. Credo primam partem veram, videlicet, quod venia sit concedenda humiliato et resistere nolenti, nisi per veniæ concessionem pacis perturbatio timeatur, tunc enim venia plectendus est. Hoc probat textus in cap. *noli*, in fin., ibi dum dicit, "maxime in quo perturbatio non timetur," et exponit Hugo, et Archidiaconus, "maxime," pro "tantum," ut sit sensus literæ, quod solum sit concedenda venia ubi non timetur pacis perturbatio, alias non. Et fertur quod per illam expositionem Carolus fecit amputari caput Conradino.

[Cap. xxxi.] *De his qui tenentur ad bellum accedere, et de accedentibus non astrictis.*

Quarto videndum restat de his qui tenentur ad bellum accedere, et quid de accedentibus non astrictis ?

An, a domino moto iusto bello, teneantur vassalli accedere propriis sumptibus ?

Et quæritur primo, an, si dominus moveat iustum bellum, teneantur vassalli accedere cum armis et equis et in expensis propriis. Et videtur quod sic, quia vigore iuramenti tenentur iuvare dominum, ut xxii, q. v, *de forma*; Innocentius, in cap. *sicut*, De iureiur., tenet quod non tenetur, nisi ex pacto speciali ad hoc sint obligati, cum ipsi non teneantur ad munera personalia. Conclude in hoc quod vassalli de iure non tenentur, nisi ad ea quæ continentur in cap. *de forma*, xxii, q. v; nisi ex speciali conventionione ad illud obligentur ut.

[Cap. xxxii.] *An subditi uni baroni, moventi guerram contra regem suum, teneantur ipsum baronem iuvare contra regem.*

Secundo quæro, pone quod Baro Regis Hispaniæ moveat guerram ipsi regi, et mandet omnibus hominibus suis ut iuvent ipsum in bello contra Regem, numquid tenentur, cum iuraverint ipsum iuvare contra omnem hominem. Et videtur quod sic, nam grave est fidem fallere, Qui cleri. vel voventes, *veniens*, et cap. sequenti; l. i, ff. De consti. pecunia. Etiam verba generaliter probata generaliter sunt intelligenda, ff. De legat. præstan., l. i, § *generaliter*. Etiam quia iuramentum astringit, nisi a iuramento absolvantur, xv, q. vi, cap. ii et iii. Contrarium est verum, nam Baro movens guerram Regi incidit in legem Iul. maiestatis, l. i et l. ii, ff. Ad leg. Iul. maiest.; vi, q. i, § *verum*, versus *quisquis cum militibus*; lxxix dist., cap. ii. Nam Rex Hispaniæ est princeps in regno suo. Etiam opem non fert qui ad peccandum iuvat, xiv, q. vi, *si res*; nec præceptum illius ipsos excusaret, ff. De oblig. et act., l. *servus*; xi, q. iii, *non semper*, et cap. *qui resistit*, et cap. *si dominus*. Nec sacramentum ad hoc ligat, quia non est inventum ut sit iniquitatis vinculum, xxii, q. iv, *inter cetera*; De iureiur., cap. i, Lib. VI; faciant quæ notantur in cap. *petitio*, De iureiurando.

[Cap. xxxiii.] *An subditi uni baroni, moventi guerram alteri baroni, teneantur ipsum primo, an regem moventem guerram alteri regi, iuvare, utriusque mandato uno concursu recepto ?*

Tertio quæritur, Baro Regis Hispaniæ movet guerram alteri Baroni, Rex Hispaniæ movet guerram regi Granatæ. Baro mandat hominibus quatenus iuvent ipsum; Rex autem mandat eisdem ut iuvent eum; et concurrunt mandata. Quem primo iuvare tenentur ?

Videtur quod primo Baronem, nam Baroni sunt subiecti ratione fidelitatis et ratione iurisdictionis, in Authent., De quæstore, § *si vero*, Coll. vi. Regi

autem sunt subiecti ratione iurisdictionis generalis tantum, et sic duæ rationes vincunt unam, in Authent., De consang. et uter. frat., § i; De re iudic., *cum æterni*, Lib. VI; xiii dist., can. i.

In contrarium videtur. Nam vocati a Rege sunt vocati ad maius tribunal, et sic præferendum, ff. De re iudic., l. *contra pupillum*, § fin.; xviii dist., *si Episcopus*. Etiam quia Rex vocat pro communi bono et defensa coronæ, et sic iure gentium obediendum, ff. De iustitia et iure, l. *veluti*; i dist., *ius gentium*; xxiii, q. iii, *fortitudo*, et q. viii, cap. *omni*, et cap. *si nulla*. Nam pro defensione patriæ licitum est patrem interficere, ff. De relig. et sumpt. fun., l. *minime*. Et hæc vera.

An vassallus nonlegius duorum dominorum, uno concursu requisitus, utrumque vel alterum, et quem, iuvare teneatur?

[Cap. xxxiv.]

Quarto quæritur, quid de vassallo nonlegio duorum, quod esse potest ratione diversorum feudorum, De suppl. negl. prælat., *grandi*, Lib. VI. Si uterque dominorum simul requirat eum ut iuvet ipsum in bello, tenetur utrumque, an alterum, et quem, iuvare?

Apparet quod neutrum, cum concursu se impendant, ff. De usufr., l. *quotiens*; De Pœnit., dist. i, § *hoc idem*, vers. *Christus ait*; xxi, q. i, cap. i.

Apparet quod utrumque, alias perdet feudum, quia difficultas præstationis ex parte promissoris non perimit obligationem, ff. De verb. obl., l. *continuus*, § *illud*. Item potest quis duobus dominis servire, ut ff. De operis libert., l. *duorum*. Quidam dicunt locum esse gratificationi, exemplo servi duorum dominorum, qui si viderit utrumque dominum interfici, iuvare poterit quem voluerit, ff. Ad Silianum, l. *si quis in gravi*, § *si cum omnes*. Alii dicunt quod iuvabit priorem dominum, et cui primo iuravit, ut in Vsibus Feudorum, De prohib. feud. alien., l. *imperialem*, § *illud*; ff. Locati, l. *in operis*; C. Qui potiores in pign. hab., l. ii. Nam priorem fidelitatem servare tenetur, l. di., *quia sanctitas tua*; Qui cleri. vel vov., *veniens*.

Tutius tamen est quod primo serviat personaliter, secundo per substitutum, si hoc patiatur natura feudi, C. De caduc. toll., l. una, § *sin autem*. Nec obstat quod iuravit secundo, salva fidelitate primi, quod est de natura hominis nonlegii, quia serviendo secundo per substitutum non nocet primo, quod salvatum fuit in iuramento secundi.

An vassallus teneatur iuvare dominum contra patrem, vel pater contra filium?

[Cap. xxxv.]

Quinto quæritur, an vassallus teneatur iuvare dominum contra patrem, vel pater contra filium. Glossa format quæstionem, xxii, q. v, cap. *de forma*, et tenet quod sic. Nam filius solum vinculo naturæ obligatus est patri, sed vassallus domino vinculo iuramenti, ut in præallegato cap. *de forma*. Hoc

probat textus in Vsibus Feud., in cap. *quemadmodum feud. amit.* Glossa aequaliter sentit contrarium, in cap. *quoniam milites*, xi, q. iii. Putarem ponderandam qualitatem impendendi subsidii.

An civis duarum civitatum teneatur unam iuvare contra aliam?

Sexto quæritur, an civis duarum civitatum teneatur iuvare unam contra aliam. Solutio. Dic ut dictum est in vassallo duorum dominorum.

[Cap. xxxvi.] *An vassallus, vocatus a domino, teneatur ipsum sequi in partibus ultramarinis ad pugnandum contra barbaros?*

Septimo quæritur, dominus vult ire ad partes remotas, pone ultra mare, ad pugnandum cum barbaris, numquid vassallus, vocatus ab eo, teneatur ipsum sequi ad bellum? Solutio. Si dominus est talis status et conditionis quod prædecessores sui et ipse consueverunt illuc accedere, et vassalli ipsum sequi, et tunc tenetur exemplo liberti, qui tenetur ad operas consuetas, ff. De operis lib., l. *opere*, et l. *pæn.*; ff. De pign. act., l. *[qui] vel universorum*. Præstabuntur tamen a domino sumptus moderati, arbitrio boni viri. Si autem sit talis qui non possit nec consuevit, tunc secus, ff. De operis lib., l. *quod nisi*, § *fin.*; ff. De arbit., l. *si cum dies*, § *si arbiter*. Hæc etiam tangit Speculum in Speculo, tit. De feudis, § *ipsum*.

[Cap. xxxvii.] *An servi teneantur ubique sequi dominum ad bellum?*

Octavo quæritur de servis, an teneantur sequi dominum ubique ad bellum. De his non est dubium, cum in eos dominus plenam habeat potestatem, dummodo non nimis sæviat in eos, ff. De his qui sunt sui vel alien. iuris, l. i et ii.

[Cap. xxxviii.] *An liberti vocati teneantur sequi patronum ad bellum?*

Nono quæritur, quid de libertis? Solutio. Liberti tenentur ad operas solitas, nec insolitæ possunt eis imponi, ff. De operis lib., l. *quod nisi*, § *si vag.* ①; ff. De procur., l. *sed hæc*, § ii.

[Cap. xxxix.] *An agricolæ vocati teneantur sequi dominum ad bellum?*

Decimo quæritur, quid de agricolis, an vocati ad bellum a dominis accedere teneantur? Solutio. Agricolæ dividuntur in ascripticios et censitos. Ascripticii dicuntur per scripturam solo astricti, unde in adventiciis duæ interveniunt scripturæ, una ad constituendum, alia ad probandum. Prima qua promittunt domino soli nunquam a solo recedere, alia qua profitetur se ascripticius, et de his scripturis in l. *scimus*, C. De agric. et censitis. Et inter hos

et servos pæne nulla est differentia, ut l. *ne diu*, C. eod. titulo. Et dico pæne, quia differunt, quia servus alienari potest cum peculio, et sine, ut denuo^m l. *ne diu*; ascripticius non sine solo, ut l. ii, C. eod. titulo. Item ascripticii citra domini voluntatem ordinari possunt in possessionibus quibus ascripti sunt, in Authent., De sanct. episc., § *ascripticios*; servi autem non. Item ascripticii, sciente et tacente domino, contrahunt matrimonium, nec conditionem mutant, ut C. De agricol. et censitis, l. ult.; servi autem contrahentes, scientibus dominis et tacentibus, liberantur a servili conditione, ut in Authent., De nupt., § *si vero*. Ex quibus luce clarius apparet quod ius quod habent domini in ascripticios est ius relatum ad possessiones quibus ascribuntur. Et sic apparet quod provocati a domino ad extranea onera personalia, non artantur, nisi ex conventionem aliud sit inductum. Censiti autem sunt qui certæ rei annuatim præstandæ constituti sunt, C. Quib. caus. coloni, l. ii. Etiam in hoc differunt ab ascripticiis, quia ascripticii sunt ascripti ad incertam rem præstandam, puta tertiam vel quartam fructuum, isti autem certæ rei; et de his infertur ut supra. Per hoc infertur quod nec coloni nec inquilini necessario artari possint.

An confœderatos possit dominus vocare ut ipsum iuvent in bello?

[Cap. xli.]

Vndecimo quæritur, quid de confœderatis et colligatis, numquid dominus poterit confœderatos provocare ad bellum ut ipsum iuvare teneantur? Solutio. Confœderati sunt plene liberi, licet ad aliqua teneantur ex pacto, ut l. *non dubito*, ff. De captivis. In his tamen ponderanda est conventio, et conventionis modus, ut ad unguem servetur, ff. Depositi, l. i, § *si convenitur*; et l. i, De pactis.

An subditi ratione iurisdictionis tantummodo teneantur ad bellum accedere?

[Cap. xlii.]

Duodecimo quæritur, quid de his qui ratione iurisdictionis tantummodo sunt subditi, non autem sunt vassalli? Solutio. Tales accedere tenentur, nec agent ad deperdita, quia hoc faciunt ex debito. Fallit hoc regulare dictum in quibusdam personis quæ excusantur a muneribus personalibus, quorum quidam excusantur ætate, ut minores et senectute gravati, ut C. Qui ætate, in rubro et nigro; quidam infirmitate, ut C. Qui morbo, per totum; quidam liberorum numero, ut C. Qui numero liber., per totum; quidam propter professionem, ut C. De profess. et medic.; quidam sexu, ut mulieres, et consimiles. Alias stat regula.

De personis non astrictis ad bellum, libere accedentibus.

[Cap. xlii.]

Hæc autem dicta sunt de his personis quæ sunt qualitercumque astrictæ. Restat videre de personis plene liberis ad bellum provocatis. Pro cuius evidentiâ, est attendendum quod accedentibus ad bellum non necessitate nec

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debito necessario, nam de debito accedentibus supra tactum est. Quidam accedunt plena liberalitate; quidam accedunt quia tenentur ad antidora; quidam accedunt propter gloriam quærendam et consequendam in bello; quidam accedunt quia locant operas suas, si contractus locati appellari potest, ut stipendiarii; quidam accedunt solum animo spoliandi, ut nuncupati "Sacco-manni," quasi manu arripientes et sacco deferentes, et de his videamus. Et primo de primis, ut de plene libere accedentibus.

An libere accedentes obligent sibi illum in cuius servitium vadunt, etc.?

Et primo quæritur numquid accedentes libere ad bellum obligent sibi illum in cuius servitium vadunt, si damnum incidunt, utpote si in bello perdant arma, equos, sive capiantur, sive etiam eundo ad bellum sive redeundo? Solutio. Hic est attendendum quod accedentes libere aliquando accedunt prius vocati et rogati a dominis, aliquando motu proprio, non requisiti a dominis. Si accedunt vocati a dominis, tunc habent actionem mandati contra dominum, si sic, ut supra dictum est, contingat, aliquid ipsos perdere, nisi appareat quod causa pietatis, humanitatis, vel parentelæ, hoc faciant, xxiii, q. iii, *non [inferenda] in inferenda*; xi, q. iii, *si dominus*, et cap. *Iulianus*. Si autem opponas, et dicas dominum non teneri, quia talia perdunt casu fortuito, de quo quis non tenetur, De homici., *Iohannes*; C. De pign. act., l. *quæ fortuitis*. Solutio. Iste est casus fortuitus qui potuit et debuit prævideri, quia verisimiliter hæc contingunt in bellis, quia dubius est eventus belli, et ita notat Innocentius in cap. *sicut*, De iureiurando.

[Cap. xliii.]

An commodatarius teneatur commodanti equos et arma in bello deperdita resarcire?

Secundo quæritur, quid de commodante tali arma et equos pro eundo ad bellum, numquid, si perdantur, teneatur commodatarius commodanti? Et videtur quod sic, argumento supra proximo a simili, cum hoc etiam prævideri potuerit, ut supra. Solutio. In hoc casu secus, secundum Innocentium, et est ratio differentię, quia in hoc casu commodatarius non excessit fines, quia non est usus nisi ad usum illum ad quem initus est contractus, idcirco non tenetur, ff. Commod., l. *si ut certo*, § *sed interdum*. In mandato autem, licet præscire potuerit quod perdere verisimiliter potuerit, tamen sciebat actionem mandati sibi competere, quia illud evenit ex natura contractus. Et hæc semper procedunt, nisi ex pacto speciali aliud sit inductum.

[Cap. xliv.]

An conductor teneatur locatori equos et arma in bello deperdita resarcire?

Tertio quæritur quid de locante equos et arma? numquid, si perdantur in bello, aget locator contra conductorem? Solutio. Dic ut supra in commodante, quia non aget, quia ad hoc conduxit, nec fines excessit, ff. Locat. et conduct., l. *si quis domum*.

An provocans contra spoliatorem provocati ad bellum accedentis agat vi bonorum raptorum? [Cap. xlv.]

Quarto quæritur, quid si provocatus ad bellum, in itinere accedendo ad eius subsidium, spoliatur armis, et equis, et aliis rebus suis? Dictum est quod mandans teneatur mandatario, sed numquid aget mandans contra spoliante vi bonorum raptorum, vel furti? Apparet quod sic, quia eius interest, quia tenetur actione mandati mandatario. Solutio. Ei contra spoliante non competunt actiones illæ. Et est ratio, quia vi bonorum raptorum competit illi in cuius bonis erant rapta, ff. Vi bon. rapt., l. ii, § *hac actione*. Actio enim vi bonorum raptorum, vel furti non competit nisi illi qui habuit dominium, vel possessionem, vel detentationem, vel aliquod ius in re, ut est ille cui obligata erat res pignori, et nondum tradita, ff. De præscript. verb., l. *si gratuitam*, § *si quis*; ff. De furt., l. *si is qui rem*, et l. *is cui*. Spoliatis, ergo, competunt hæ actiones, poterunt tamen agere actione mandati contra mandantem, et mandans, cum solverit, facere sibi cedi actiones contra spoliante, et tunc aget iure cesso, ut procurator constitutus in rem suam, C. Mand., l. pæn., et l. fin. Hoc etiam tenet Innocentius in præallegato capitulo, *sicut*, De iureiurando.

An non vocati ad bellum, sed proprio motu accedentes, obligent sibi illum in cuius servitium vadunt? [Cap. xlvi.]

Quinto quæritur de accedentibus non provocatis, sed motu proprio. Solutio. Si animo donandi, est clarum, ut puta pietatis, humanitatis, vel parentelæ. Tales non agent, xxiii, q. iii, *non [inferenda] in inferenda*; xi, q. iii, *si dominus*, et cap. *Iulianus*. Si autem animo obligandi eum cuius negotia gerunt, tunc agent actione negotiorum gestorum, et sufficit utiliter coeptum, ff. De neg. gest., l. *sed an ultro*.

An non vocati ad bellum, sed proprio motu accedentes et utiliter proficiscentes, obligent sibi illum, etiam renitentem et contradicentem, in cuius servitium vadunt? [Cap. xlvii.]

Sexto quæritur quid de accedentibus proprio motu, contradicentibus tamen illis in quorum subsidium vadunt, numquid tales agent si utiliter incipiant, et feliciter impleant, ut magis procedat quæstio? Apparet quod sic, ad similitudinem illius qui trahit aliquem invitum de domo ruitura, xxiii, q. iv, *ipsa pietas*. Etiam quia invito concedi potest beneficium, xlv dist., *et qui emendat*. Etiam quia videtur fuisse insanæ mentis contradicendo ne iuvetur, ff. De condi. instit., l. *quidam*; De Pœnitentia, dist. iii, *adhuc instant*; sic tenet glossa in medico medicante alicui contra voluntatem suam. Hoc notat lxxxiii dist., in summa. Contrarium credo in casu proposito per l. ult., C. De neg. gest.; nec propterea reprobo glossam, immo credo, quod verum dicat in infirmo et medico, quia infirmus præsumitur insanæ mentis, cum non vult absolute curari. Sed iste qui contradicit huic, ne veniat ad bellum pro succursu suo, non præsumitur insanæ mentis, nam possibile est quod non confidit de eo, et

dubitat ne prodat ipsum. Nec credo quod glossa procedat in casu in quo infirmus bene vellet sanari, sed nollet istum, immo potius alium, tunc iudicio meo non procederet glossa, nec hoc probant allegata supra. Hoc de accedentibus libere.

[Cap. xlviii.]

De accedentibus quia tenentur ad antidora, an tales agant contra illum quem iuvant?

Restat videre quid de his qui vadunt quia tenentur ad antidora, ut puta quia simile, vel aliud, subsidium recepit ab eo. Numquid talis aget contra illum quem iuvat ad deperdita, ut supra? Solutio. Si sic vadit, ut thema supponit, vadit animo dissolvendæ obligationis naturalis, quæ tamen non potest deduci in civilem, nec de ea excipi potest in iudicio. De qua ff. De petit. hæred., l. *sed si lege*, § *consuluit*; De testamentis, *cum in officiis*. Et sic infertur quod vadat non animo obligandi, cum idem actus uniformiter sumptus non possit parere contrarios effectus, ff. De verbor. obligat., l. *si quis*; ff. De condict. indebiti, l. *cum pars*, § *heres*, et l. *cum heres*^o. Et si dicas hic non est opus dissolutione, quia nulla nata obligatio efficax ad agendum, vel excipiendum, et sic non potest dissolvi, quod non est, ff. De iniusto, rupto, irritato facto testam., l. *nam*; idem quod De desponsatione impuberum, cap. *ad dissolvendum*. Solutio. Licet non sit nata obligatio efficax ad agendum vel excipiendum, ut supra dictum est, tamen nata est talis naturalis quæ dissolvi potest per antidoti recompensationem, ut iuribus statim allegatis, et iste animus dissolvendi impedit nativitatem obligationis, cum in obligatione requiratur animus, ut l. *obligationum*, ff. De oblig. et act., et l. *non figura*, eodem titulo.

[Cap. xlix.]

De accedentibus propter gloriam consequendam.

Restat videre de accedentibus propter gloriam consequendam in bello.

An tales obligent sibi illum in cuius subsidium vadunt?

An tales obligent sibi illum ad cuius succursum accedunt. Solutio. Si ob hoc solum accedunt, non obligant, nam aut dominus teneretur actione mandati, aut neg. gestorum. Non mandati, cum nullum intervenerit mandatum, ut supponitur in themate quæstionis propositæ, nec actio mandati oritur nisi intercedente mandato, nam licet aliqui dicant quod actio mandati oriatur ex culpa vel dolo intervenientibus, iam suscepto mandato, tamen requiritur præcedentia mandati, ut l. i, ff. Mandati. Vel si dicas quod oriatur ex contractu præcedenti, quod verius, sicut alias dicimus in contractibus innominatis, ut l. *ex placito*, [ff.] C. De rerum permutatione. Non negotii gesti, quia non accessit animo gerendi negotia illius, immo propria, licet in vim consequentiæ alterius negotia gerat, et sic nec illa competet.

De accedentibus quia locant operas suas.

[Cap. I.]

Restat videre de his qui locant operas suas, vel verius assumuntur per electionem, constituto salario.

An tales agant contra conductores ?

An locatores agant contra conducentes ? Solutio. Tales locant operas et rem, et ideo si conductor utatur solum ad id ad quod conducuntur, non tenetur, ut l. *si quis domum*, ff. Locati et conducti ; et hoc nisi aliud speciale pactum interveniat, vel consuetudo aliud inducat, ut est in Italia, scilicet, quod præstantur emendæ equorum deperditorum in servitio conducentis, alias stat regula, ut supra deductum est.

De accedentibus animo spoliandi. An talibus competat actio ?

[Cap. II.]

Restat etiam videre de his qui accedunt animo derobandi, et de his non est dubium quod talibus non competit actio, cum super re turpi nulla inducatur obligatio, ff. De verbor. obligation., l. *veluti*, et l. *generaliter* ; et * l. *si ex plagis*.

An clerici ad bellum accedere possint ?

[Cap. III.]

Vlterius est videndum quid de clericis, an, scilicet, possint ad bella accedere ? Hanc quæstionem terminavit Gratianus, xxiii, q. viii, *convenior* ; ut glossa ibi recitat in summa. Circa hoc fuerunt opiniones variæ, nam aliqui dicunt quod clerici possunt uti armis defensionis, non autem impugnationis, et sic bellare propter defensam. Alii quod omnibus armis, dummodo impugnent in continenti, et pro seipsis tantum defendendis, et non pro aliis, et pro se in necessitate inevitabili positis, De homicidio, cap. ii ; xxiii, q. viii, *convenior* ; et eadem causa et q. i, in principio. Si autem alias evadere possunt, tunc non possunt, ut cap. *suscepimus*, De homicidio. Alii dicunt quod auctoritate Papæ possunt, alias non. Gandulphus tenet quod personaliter bellare non possunt, sed per alios possunt. Idem videtur sentire Gratianus, xxiii, q. i, § *in registro*.

Concludendo in hoc puncto, clerici vocati a Papa possunt accedere, nam penes Principem est auctoritas bellandi, xxiii, q. i, *quid culpatur* ; eadem causa et q. ii, cap. i, et q. iii, cap. *Maximianus*. In bello autem eis non est licitum occidere etiam paganum propter metum irregularitatis, possunt tamen alios confortare ad bellum, ut pugnent, immo et lapides et alia proicere, dummodo ex eorum ictibus nulli occidantur. Ita notat Innocentius, De restit. spol., *olim* ; et cap. *sententiam*, Ne cler. vel monachi. Vocati ab aliis, maxime principibus sæcularibus, bellare non debent. Pro defensione autem propria, ubi aliter evadere non possunt, licitum est etiam occidere, etiam sine metu irregularitatis, ut in Clem., *si furiosus*, De homicidio. Et

* *Supplendum* 'Ad legem Aquiliam,'.

bene dico defensa propriæ personæ, secus si defendat alium etiam in continenti, ut patrem, fratrem, et similes personas. Nec huic obstat quod notat Innocentius, in cap. *si vero*, i, De sent. excom.; ubi tenet quod percutiens clericum hoc casu non est excommunicatus. Nam irregularitas contrahitur etiam sine culpa, ut in iudice iuste occidente, li dist., cap. i; et nota in cap. *inter opera*, De sponsalibus. Excommunicatio autem non contrahitur sine culpa, immo oportet quod præcedat diabolica persuasio, xvii, q. iv, *si quis suadente*; ita notat Clem., in dicto cap., *si furiosus*.

An autem imputari possit clerico qui non fugit, sed exspectat invasorem et ipsum se defendendo interficit? Videtur quod imputari debeat, per textum illius Clementis, cum dicit, "qui mortem aliter vitare non poterat"; probatur per l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil.; unde sumpta est dicta Clementis. Et hoc ad exemplum Salvatoris, qui fugit in Ægyptum, xxiii, q. iii, § i. Et hoc notat Bernardus in cap. *suscepimus*, De homicidio.

Contrarium credo per l. *in eadem*, ff. Ex quibus causis maiores; nam ibi æquiparantur hæc duo, non posse recedere, et sine dedecore non posse. Fortius movet, quia in fuga posset occurrere periculum, utpote si caderet, quod frequenter occurrit in fuga, unde non debet se tali periculo exponere, Vt lite non contestata, *accedens*, ii. In hoc tamen credo ponderandas singulas circumstantias, utpote periculum fugæ, qualitatem personæ fugientis, et invadentis, ut si propter fugam verisimiliter mortis periculum incideret, tunc non sit imputandum, alias sic.

An stipendiarii in Alamannia assumpti, constituto salario per conducentem, agent contra eum qui, dum veniunt, etc.?

Quid si stipendiarii sunt assumpti, constituto salario habentes firmam per vi menses, de Alamannia, ut veniant ad serviendum Italico, et, dum veniunt, Italicus perdit statum suum totaliter, numquid stipendiarii agent ad salarium?

[Cap. liii.]

An stipendiarii assumpti de Alamannia per civitatem Italicam, salario constituto per annum, qui dum venirent, civitas tyrannice occupata est, agent ad salarium totum, etc.?

Quid si stipendiarii sunt assumpti de Alamannia per civitatem Italicam, constituto salario, habentes firmam per annum, et interim dum sunt in itinere veniendi, civitas occupatur per tyrannum violenter, numquid agent stipendiarii ad salarium totum, aut pro rata, vel ad quid? Et videtur quod ad totum, et videntur textus hoc probare, C. De annonis [et protocolis]^o, l. i; C. De agent. in rebus, l. *matriculam*; C. De prox. sacr. scrinior., l. *si quis in sacris*; C. De primipilo, l. i; ff. De legat., l. *legatum*; ff. De var. et extra. cognitionibus, l. i, § *divus*.

In contrarium, quod pro rata, videntur textus, C. De erog. milit. annon.; l. *his scholaribus*, et l. p. in fin.; et l. *post duos*, C. De advoc. divers. iudiciorum.

Solutio. Hic non debetur pecunia ex contractu puro, immo debetur ex dispositione legis, quia sunt electi ad officium, et ex dispositione legis municipalis datur salarium. Sic ergo non est mere contractus locati et conducti. Et in talibus est attendendum quod aliquando aliqui eliguntur ad officium quod requirit laborem, ubi datur salarium pro labore principaliter, ut sunt stipendiarii. Aliquando eliguntur ad officium ubi datur salarium non solum pro labore sed quia attenditur probitas intellectus et scientiæ, ut est in potestatibus et similibus. Quandoque eliguntur ad officium, et datur salarium pro utroque, scilicet, et pro labore, et pro probitate intellectus et scientiæ, ut in legatis.

Primo casu, datur pro rata temporis quo serviunt, ut l. pæn., C. De erog. milit. annonæ. Secundo casu, si una præstatio tantum erat, tunc totum datur, ut ll. allegatis in contrarium. Si autem non erat una præstatio, habere debet pro anno quo incepit officium, ut l. *post duos*, C. De advoc. divers. iudiciorum.

Tertio casu, aliquando datum in remunerationem laboris et prudentiæ est indivisibile, ut in advocatis, doctoribus, et legatis, et tunc datum totum, ut supra. Aliquando est divisibile, ut in contestabili banderiæ, nam ibi uterque eligitur, scilicet, industria et labor, et recipiunt divisionem tunc, ut stipendiarii recipient pro rata, ut industriosi et ratione industriæ electi habent totum, distinguendo, ut supra.

Est dare quantum casum, ubi quis eligitur ad dignitatem principaliter, ut domesticus Principis. Tunc habet totum, ut l. *si quis in sacris*, C. De proxi. sacr. scri.; et l. *matriculam*, C. De agent. in rebus; et l. i, De principibus. Et transit salarium ad hæredes, C. De domesti. et protect., l. fin., lib. xii. Per hoc solvitur quæstio de Comite Lando, capitaneo societatis latrunculorum, assumpto pluries per dominos Italicos ad stipendium, facta firma certi temporis, et constituto salario.

An in principio vel in fine cuiuslibet mensis solvi debeat stipendiariis?

[Cap. ltv.]

Uterius quæritur quando debeat solvi stipendiariis, an in principio cuiuslibet mensis an in fine. Glossæ aliquæ videntur in avvocato qui etiam militat, ut l. *advocati*, C. De advoc. divers. iudicio., quod debeatur a principio. Hoc tenet in l. i, § *divus*, ff. De extraordin. cognitionibus. Idem sentit in l. *properandum*, § *in honorariis*, C. De iudiciis; et l. *qui operas*, § i, ff. Locat. et conducti. Contrarium tenet in l. i, C. De principibus, lib. xii. Solutio. Aliquando datur pecunia magis pro sumptibus quam pro mercede laboris, et tunc debetur in principio. Tolle exemplum in legatis, probatur hoc, ff. De legationibus, l. *legatum*^o; ff. Mand., l. *si vero non remunerandi*, § *si [mandato] mandavero*; C. De legationibus, l. ii, lib. x. Aliquando debetur pecunia pro mercede laboris, et tunc ponderari debet quid actum sit expresse vel tacite, nam si tacite actum sit, tunc videtur quod in principio. Ecce talis

est qui non potest exhibere operas promissas nisi sibi detur pecunia, tunc videtur actum tacite quod debeat in principio, tunc enim semper inspicimus quod verisimilius est, ff. De regul. iur., l. *semper in stipulationibus*. Si autem non apparet ista verisimilitudo, tunc ex obligationibus quæ descendunt ex contractu salarium debetur in fine temporis, ut notandum in l. *eadem*, C. Locat. et conduct. ; et notanda ff. De stip. servorum, l. *si servus communis Mævii*, § *finalis*. Si autem debeat ex dispositione legis electis ad officia, de quibus supra, ut in proposito, tunc, si est unum tantum salarium, tunc in initio debet præstari, ut l. i, § *divus*, ff. De var. et extraor. cognitionibus. Et si intelliguntur glossæ hoc sentientes, aut est annuum vel menstruum, ut in stipendiariis de quibus loquimur, qui habent vii florenos in mense proposita, et tunc debetur in principio, ut l. *post duos*, C. De advoc. diver. iudic. ; et l. i, C. De principibus, lib. xii. Puto tamen quod stipendiarii non habeant effectualiter nisi pro rata temporis quo serviunt, ut supra deductum est, et residuum teneantur restituere, etiam ubi per casum extrinsecum insurgat impedimentum.

[Cap. lv.]

An stipendiarii, se absentantes tempore aliquo, etiam de licentia domini, perdant salarium pro tempore illo ?

Quid si stipendiarii pendente tempore stipendii recedunt aliquo tempore, numquid pro illo tempore perdent stipendium, et pone quod cum licentia domini ? Solutio. Hic advertendum quod operæ aliquando limitantur respectu temporis non certificati. Tolle in advocatis ecclesiae, qui habent tantum salarium pro qualibet causa quæ occurret ecclesiae illo anno, et tunc non est dubium quod est una obligatio propter unum factum ad quod inducitur, licet præstationes possint esse plures. Idcirco totum debetur, ut præallegata, l. i, § *divus*, ff. De extraor. cognitionibus. Aliquando operæ sunt limitatæ respectu certificati et certi temporis, ut in doctore assumpto ad legendum librum certum, tempore certo. Et tunc aut promittitur totum salarium simul, sed fit distributio solutionis per partes temporis, et tunc etiam una obligatio, ut supra, ut l. *lecta*., ff. De rebus creditis. Aliquando fit annua vel menstrua, et tunc sunt tot obligationes quot menses, ut l. *post duos*, et tunc non habet pro toto tempore, immo singulis mensibus quibus servit cedunt dies obligationum singularum.

[Cap. lvi.]

An stipendiarii, qui culpa sua nolunt servire toto tempore firmæ suæ, perdant stipendium totius temporis, aut pro eo tantum quo non servierunt ?

Quid si culpa sua nolunt servire toto tempore, an perdent salarium totius temporis, sic quod nihil habeant etiam pro tempore quo servierunt, an solum perdere debeant pro tempore quo non serviunt ? Solutio. Quædam sunt officia, ad quæ quis eligitur, quæ sic sunt individua quod aliquo omisso residuum nihil relevat, et in talibus totum perditur. Tolle exemplum in legatis,

ut C. De legationibus, l. ii. Quædam sunt officia quæ sunt quoad hoc sic dividua, quod aliquo omisso residuum relevat. Tolle exemplum in potestate in stipendiario. Tunc non reddit totum, sed solum pro tempore futuro, tenetur tamen pro futuro tempore ad interesse, ut si nihil intersit, nihil solvat, ff. Locat. et conduct., l. *si fundus*, versiculus [*verisimilis*] *similiter*; et not. in l. *Mævia*, ff. De annu. legatis.

An stipendiarius possit servire per substitutum?

[Cap. lvi.]

Quid si velit servire per substitutum? Apparet quod non possit, quia electa industria personæ, ut l. *inter artifices*, ff. De solut.; l. una, C. De caduc. tollend.; et cap. ult., De offic. delegat., et cap. *is cui*, eod. tit., Lib. VI. In contrarium videtur, quia potest quis per alium quod per se, ut regula *potest quis*, cum similibus. Solutio. Debet ponderari modus assumptionis, nam aliquando dominus vel civitas assumit contestabilem, cui dat banderiam et stipendium, et contestabilis debet sibi eligere sub banderia quos voluerit, et tunc non currit quæstio inter civitatem et stipendiarios, quia civitas nihil eligat nisi industriam et laborem contestabilis, ipsi tamen tenentur. Aliquando civitas eligit sibi stipendiarios quos reponit sub singulis banderiis, et tunc in contestabili eligitur industria et opera. Ex capite industriæ non posset dare substitutum, ut iuribus statim allegatis. In stipendiariis eligitur tantum opera et labor, tunc in his quorum opera eligitur, et non industria, potest quis dare substitutum, ut notat Innocentius, in cap. *cum Bertholdus*, De re iudicata. Hostiensis ibi contrarium. Credo opinionem Innocentii veriore, ponderatis iuribus statim allegatis, et eorum mente. Tutius tamen est quod fiat cum consensu domini, ut salvetur utriusque opinio.

An stipendiarius perdat stipendium tempore quo infirmatur?

[Cap. lviii.]

Quid si stipendiarius infirmetur? Solutio. Servire videtur, ut debeatur salarium, ut l. *si heres*, § *Stichus* ^m, ff. De statuliberis.

De spoliis et capturis quæ sunt in bello. An aliquis capiens in bello efficiatur dominus personæ captæ et rei, et an sit locus postliminio?

[Cap. lix.]

Quinto videndum restat de spoliis et capturis quæ in bello fiunt.

Et primo quæritur, an in bello aliquid capiens efficiatur dominus personæ captæ et rei, et an sit locus postliminio? Solutio. In bello publico, auctoritate Principis inducto, de quo supra dictum est, hæc omnia procedunt, nam capiens efficitur dominus, capti efficiuntur servi, ut l. *hostes*, ff. De captivis; et l. *hostes*, ff. De verb. significatione. Si autem bellum non sit ex edicto Principis, licet alias iustum, ut cum sit pro defensione rerum suarum, tunc si ille qui bellum indicit habet iurisdictionem super eo pro quo bellum indicit, potest statuere

quod quilibet capiens aliquid in bello illo efficiatur dominus rerum captarum, et personam detineat donec præsentet superiori. Ita tenet Innocentius in cap. *sicut*, De iureiurando, remittens super hoc ad notam in cap. *a nobis*, De sent. excommunicationis. Subdit Innocentius quod, si non fecerit aliquam constitutionem, poterit illum damnare de invasione facta infra fines suæ iurisdictionis, ut in Authent., *qua in provincia*, C. Vbi de crim. agi oporteat. Subdit quod, si bellum indicens nullam habet iurisdictionem, sed solum defendit se et bona sua, tunc non licet sibi invasorem suum capere, et captum detinere, quia solum licet sibi se defendere, tamen cum moderamine inculpatæ tutelæ, C. Vnde vi, l. i; De restit. spoliat., *olim*. Subdit quod, si invadat res inuasoris sui, quod invasori non competit vi bonorum raptorum, nec iniuriarum, quia obstat exceptio paris criminis. Hæc omnia, ut dixi, notat Innocentius in cap. *sicut*, De iureiurando. Primum dictum Innocentii puto verum indistincte, quia dominus propter delictum per constitutionem suam potest quem privare dominio rei suæ et in alium transferre. Secundum autem dictum non credo verum indistincte. Immo credo quod, si civitas non recognoscens superiorem de facto indicat bellum alii, etiam non recognoscenti, et sic quælibet sit hostis populi Romani, quod, sine aliqua constitutione, ibi vindicet locum quod in bello indicto ex edicto Principis, nam hoc evenit ex iure gentium antiquis moribus introducto, salvo quam de personis, quia modernis temporibus non procedit quod capti in bellis istis efficiantur servi nec vendantur, nec in talibus locus est hodie postliminio. Tertium dictum legendo, illam decretalem aliquando reprobavi per rationem illam. Nam spoliatus ante omnia est restituendus, nec opponi potest exceptio criminis, ut in cap. *in literis*, et cap. *item cum quis*, De restit. spoliatorum. Non ergo excipiet primus spoliatus de crimine, nec de alio etiam maiori. Nunc scribendo credo salvari posse glossam Innocentii duobus modis. Primo, quia non loquitur Innocentius in casu in quo spoliatus ultimus intentat interdictum Vnde vi, immo loquitur in casu in quo intentat Vi bonorum raptorum, vel Iniuriarum, quæ, ut claret, multum differunt. Vel dic quod Innocentius non intelligit quod opponatur exceptio criminis in modum criminis, sed in modum alterius spoliationis, de qua excipi potest contra agentem etiam interdicto Recuperandæ, ut repellatur exceptione spoliationis, ut probat textus in cap. *super spoliatione*, De ordine cognitionum.

[Cap. lx.]

An capti in bello duarum civitatum efficiantur servi, et dominium eorum quærat?

An in istis bellis quæ facit una civitas contra aliam possint dici hostes, ut servi efficiantur capti, et dominium eorum quærat? Apparet quod non, ut l. *si quis ingenuam*, in fin., ff. De captivis. In contrarium videtur, nam quælibet civitas per se facit populum, et sic videtur quod sint hostes, sicut populus Christianus et Saracenus. Solutio. Quando est contentio inter duas civitates quæ sunt sub eodem domino, non est locus captivitati et postliminio,

ut l. *si quis ingenuam*, ff. De captivis. Sed quando est contentio inter duas civitates quæ non recognoscunt superiorem, et pono, ut tollatur omne dubium, quod quælibet sit hostis Imperii, quia rebellis, tunc iure gentium, antiquis moribus introducto, est locus captivitati et iuri postliminii, sed secundum mores moderni temporis, et consuetudines antiquitus observatas inter Christianos, quantum ad personas non servatur postliminium, nec venduntur personæ, nec servæ efficiuntur.

An capta in bello efficiantur capientium?

[Cap. lxi.]

An capta in bello efficiantur capientium? Et videtur quod sic, per l. *si quid in bello*, ff. De captivis. Contrarium videtur probare l. *si captivus*, eod. titulo. Solutio. Lex *si quid in bello* loquitur in rebus mobilibus, contraria de immobilibus, sed opponitur, scilicet, quod mobilia publicentur, ut cap. *dicat*, xxiii, q. v. Solutio. Dico quod efficiuntur capientis, sed tenetur ea assignare duci belli, qui distribuet secundum merita. Et hæc vindicant sibi locum in his in quibus non habet locum postliminium, ut l. ii, ff. De captivis.

An in bellis sit licitum insidiari?

[Cap. lxi.]

Vltcrius quæritur, an in bellis sit licitum uti insidiis ad victoriam consequendam. Videtur quod sic, nam inquit Augustinus in libro Quæstionum, "Cum bellum iustum suscipitur, utrum aperte pugnet quis, an insidiis, nihil ad iustitiam interest." Hoc probatur per id quod habetur Iosue viii capitulo. In contrarium videtur, nam scribitur Deuteronomii xvi, "Quod iustum est iuste exsequeris." Sed per insidias exsequi est iniuste exsequi, cum sapiat dolum, et taliter agitata per actionem de dolo rescinduntur, ut ff. De dolo; C. eod. tit., per totum. Præterea insidiæ repugnant felicitati, et rumpunt fidem quæ servanda est etiam hosti, ut Augustinus ad Bonifacium, et transumptum in capitulo, xxiii, q. i, *noli*; xxxiii, q. v, *quod Deo pari consensu*. Præterea scribitur Matthæi vii cap., "Quæ vultis ut faciant vobis homines, vos eisdem facite," et in principio Decretorum. Et hoc observandum ad omnes proximos. Cum igitur nullus vellet insidias sibi fieri, ergo nec aliis facere debet. Solutio. Hic attendendum est quod proprie insidiæ dicuntur, quæ tendunt ad fallendum aliquem, sed dupliciter contingit aliquem falli, verbo, vel facto, alterius. Vno modo, si dicatur falsum, ut decipiatur, vel ut aliquid promissum non attendatur, et tunc sic utendo insidiis semper est illicitum, nam inter hostes sunt quædam fœdera quæ servanda sunt, ut inquit Ambrosius in libro De Officiis. Alio modo potest falli, dicto vel facto nostro, quia non aperimus sibi propositum nostrum nec secreta nostra. Et hoc modo licet fallere, nam nec semper secreta Sacræ Scripturæ sunt pandenda, ne irrideant, iuxta illud Matthæi [x] vii cap., "Nolite sanctum dare canibus." Immo hoc est præcipuum mandatum inter militaria documenta, ut secreta non revelentur hostibus, et sic etiam determinat Beatus Thomas, Secunda Secundæ, quæstione xl; et glos.,

xxiii, q. ii, cap. *dominus*, dicit indistincte, uti posse, dummodo non rumpamus fidem, ut cap. *noli*, eadem causa, et q. i. Hoc idem tenet glossa in cap. *utilem*, xxii, q. ii; allegat canon. *in mandatis*, xliii dist.; ff. De captivis, l. *nihil interest*; C. De commerc., l. ii; xiv, q. v, *dixit*; De consecra., dist. ii, *dixit dominus*.

[Cap. lxiii.]

An in festis licitum sit bellare?

Consequenter quæritur, an in festis sit bellandum? Et videtur quod non, nam festa sunt inducta ut quis vacet divinis, De consecra., dist. ii, § *pronuntiandum*; De feriis, cap. ult.; C. eod. tit., l. *dies*, et l. ultima, et probatur Exodi xx capitulo. Præterea Isaïæ lviii cap., reprehenduntur qui in diebus ieiunii repetunt debita, et committunt lites, pugno percutientes. Multo magis igitur in festis bellantes sunt reprehendendi. Præterea nihil inordinate agendum est ad vitandum temporale incommodum. Ergo. Præterea videtur text. in cap. i, De treug. et pace.

In contrarium videtur, nam legitur primo Maccabæorum ii cap., "Cogitaverunt laudabiliter dicentes, omnis homo qui venit ad nos in die belli, in die Sabbatorum pugnemus adversus eum." Solutio. Beatus Thomas, Secunda Secundæ, quæstione xl, tenet quod in festis bellari possit, necessitate urgente, ipsa autem cessante, cessandum est, quod probat per id quod habetur Iohannis vii cap., "Mihi indignamini, qui totum hominem sanavi in Sabbato?" Et sic infert medicos medicari posse propter salutem privatam hominis, multo magis autem procuranda est utilitas publica. Goffredus et Hostiensis, in cap. i, De treug. et pace, dicunt quod die Iovis non est bellandum, quia Dominus illa die ascendit ad cœlos, et cœnam fecit cum discipulis, De consecra., dist. i, *porro*; et De consecra., dist. [ii] iii, *literis*. Die Veneris non, propter reverentiam passionis Domini; die Sabbati non, quia discipuli ea die latitaverunt propter metum Iudæorum, et quia corpus Domini latuit in sepulchro, De consecra., dist. iii, *Sabbato*. Die Dominico non, quia fere omne insigne fecit Dominus illa die, lxxv dist., *quod die*, et propter reverentiam resurrectionis. Credo ponderandam necessitatem urgentem, ut supra tactum est. Textus Nicolai Papæ est in cap. *si nulla*, xxiii, q. viii.

[Cap. lxiv.] *An consecutus in bello totum suum interesse possit iterum adversarium, etc.?*

Consequenter quæritur, quid si aliquis in bello consecutus est totum interesse suum, an iterum possit in iudicio convenire adversarium suum, vel adhuc possit bellum indicare contra eum? Videtur quod iterum convenire possit, nam captum in bello est pœna contumaciæ, ergo nihilominus agere potest, ff. De tab. exhib., l. *locum*, § *pænultima*. Item res non est soluta pro debito, immo in bello quæsit dominium, xxiii, q. v, *dicat*; et q. vii, *si de rebus*; ff. De acquir. rer. dom., l. *naturaliter*. Item quia contra contumacem iurari

potest in infinitum, ff. De rei vind., l. *qui restituere*. Glossa in cap. *dominus*, xxiii, q. ii, tenet contrarium, per regulam *bona fides*, ff. De reg. iuris.

Ego non credo glossam veram indistincte, immo distinguere debet an ab eodem, an ab aliis. Si ab eodem, procedat opinio Iohannis, si ab aliis, aut habentibus causam ab eo, et tunc idem, ut C. De evict., l. *emptori*; vel haberet regressum contra primum, ut C. De usur. rei iudic., l. ii, § finali. Alias autem licitum est pluries idem solvi, ut l. iii, § *condemnatio*, ff. De tab. exhib.; et Instit., De legat., § *si res*. Sic notat glossa in regula *bona fides*, ff. De reg. iur.; et ita etiam notat Io. [Fauc.] Fauentinus^o in dicto cap. *dominus*.

An morientes in bello salventur?

[Cap. lxxv.]

An morientes in bello salventur? Solutio. Morientes in bello Ecclesiae pro ipsius defensione consequuntur coeleste regnum. Hoc probant duo textus specialiter, cap. *omni*, xxiii, q. viii, et fuit Leonis Papae directum ad regem Francorum; et cap. *omnium*, xxiii, q. v, et fuit Nicolai directum exercitui Francorum. Decedentes autem in aliis bellis alias iustis, etiam salvantur, dummodo decedant sine mortali; si autem in bello illicito, et cum illo solo mortali decedant, pereunt, De Poen., dist. v, *fratres*.

An pro rebus et possessionibus ecclesiae liceat bello corporali bellare, etc.?

[Cap. lxxvi.]

An liceat bello corporali defendere possessiones ecclesiae, et super hoc convocare milites? Planum quod sic. Probant textus xxiii, q. iii, cap. *Maximianus*; xv, q. vi, *auctoritatem*; lxiii dist., *Adrianus*; xxiii, q. viii, cap. *igitur*, et cap. *hortatu*; et glossa *magistra* in capitulo *auctoritatem*, xv, q. vi. Probat textus in cap. *dilecto*, De sent. excom., Lib. VI.

An liceat episcopis ad bellum accedere sine licentia Papae?

[Cap. lxxvii.]

An liceat episcopis ad bellum accedere sine licentia Papae? Dicunt quidam indistincte quod non, per canones, qui videntur hoc expresse dicere, xxiii, q. viii, *quo ausu*, et cap. *si vobis*, et cap. *si quis episcopus*. Licet illa capitula habeant varios intellectus, tamen hoc credo verum, si vocentur, vel sponte ad bella aliena, maxime saecularia, accedant, secus si defendant iura sua.

An praelati pro temporalibus quae tenent ab Imperatore, etc.?

[Cap. lxxviii.]

An praelati pro temporalibus quae tenent ab Imperatore teneanturolvere tributum pro bellis ab eo indictis? Et dicendum quod sic, ut probatur xxiii, q. viii, *si*, § *ecce*, cum duobus §§ sequentibus, usque ad § *quamvis*.

[Cap. lxi.]

An captis in bello iusto sit miserandum?

An captis in bello iusto sit miserandum? Dicendum quod sic, nisi pariendo timeatur perturbatio pacis. Probatur in cap. *noli*, xxiii, q. i, in fin., et per illud capitulum expositum, ut intelligebat Hugolinus, fuit amputatum caput Conradino.

[Cap. lxx.]

An Ecclesia debeat indicare bellum contra Iudæos?

An Ecclesia bellum debeat indicare contra Iudæos? Dicendum quod non, cum ubique parati sint servire, nec persequantur Christianos. Secus de Saracenis, qui Christianos persequuntur. Hic est textus xxiii, q. viii, *dispar*, et ibi notat glossa quod nec etiam Saracenis forent indicenda, nisi Christianos persequerentur.

[Cap. lxxi.]

An degentes in bello qui pugnare non possunt, etc.?

An degentes in bello, qui pugnare non possunt, gaudeant immunitatibus bellantium? Et dic quod sic, dummodo alias consilio sint utiles, ut nota in cap. *ex multa*, De voto.

[Cap. lxxii.]

An liceat prælatis ratione temporalis iurisdictionis, etc.?

An liceat prælatis ratione temporalis iurisdictionis bella indicare, et eis interesse, et alios hortari ad prælium? Et dic quod sic, ut notat Innocentius in cap. *quod in dubiis*, De poenis.

[Cap. lxxiii.]

An liceat prælato pro iniuria subditi, etc.?

An liceat prælato pro iniuria subditi sui, de qua non fit iustitia, bellum indicare, et alios quam iniuriantes in bello capere? Et dic quod sic, ut notat Innocentius in cap. *dilectis*, De appellat.; et cap. *sicut*, De iureiurando.

[Cap. lxxiv.]

An delegatus Papæ possit bellum indicare?

Hoc est dicere, an possit invocare brachium sæculare? Quæstio est vulgata, et tractatur in cap. *significasti*, De offic. deleg., per Innocentium.

[Cap. lxxv.]

An bella indicta per Ecclesiam contra excommunicatos sint meritoria?

An bella quæ indicit Ecclesia contra excommunicatos sint meritoria? Et dicendum quod sic, et in illis licitum est prælatis et singulis hortari alios ad pugnandum. Probant textus xxiii, q. v, *ad omnium*, et cap. sequenti; et q. viii, cap. *igitur*, usque ad § *ecce*; et q. iv, cap. *sicut excellentiam*.

Quot sint genera bellorum corporalium ?

[Cap. lxxvi.]

Consequenter quæritur, quot sint genera bellorum corporalium, de quibus reperitur in iure expressum. Solutio. Septem reperiuntur iure expressa.

Primum Romanum appellatur, quod fideles contra infideles, et hoc iustum est. De hæreticis, *excommunicamus*, ii. Et dicitur Romanum quia Roma caput fidei, xxiv, q. i, *hæc est fides*, et cap. *quoniam*; De summa Trip., cap. pænultima. Et sic potest intelligi l. *hostes*, ff. De captivis.

Secundum, quod fit auctoritate iudicis legitimi, habentis merum imperium contra contumaces et rebelles, ut l. *continet*, ff. Quod met. causa; l. iii et l. iv, ff. De iurisd. omn. iudic.; C. Ne quis in sua causa, l. una. Et hi proprie non dicuntur hostes, nam quod de suo ad nos pervenit nostrum efficitur. Non autem e converso sic intelligitur, l. v, § *in pace*, ff. De captivis.

Tertium dicitur bellum præsumptuosum, quod faciunt iudici inobedientes, De Pœn., dist. iii, § i, ad finem; De maiorit. et obed., cap. *si quis venerit*; ff. De rei vind., l. *qui restituere*; ff. Ne vis fiat ei qui in pos. missus, l. iii; C. De seditiosis, l. i, in fine.

Quartum dicitur bellum, quod licitum est quandocunque iuris auctoritate concedatur. Et est licitum quoad illum cui conceditur, ut xxiii, q. ii, cap. *si dominus*; De sent. excom., *si vero i*, § *nec ille*; C. Quando lic. unicuique sine iudi. se vindicare, l. i et l. ii; et etiam proximi et vicini, ut De sent. excom., *dilecto*, Lib. VI.

Quintum, illicitum, quoad illos qui hoc faciunt contra iuris auctoritatem, ut qui se defendit contra iudicis auctoritatem et iuris, ut De sent. excom., *perpendimus*, et cap. *contingit*, et cap. *in audientia*.

Sextum, voluntarium, quo utuntur principes sæculares nostri temporis sine principis auctoritate. Et hoc iniustum, quia nec sine principis auctoritate licet arma portare, C. Vt armor. usus, in rubro et nigro, lib. [xii] xi; in Authent., De man. prin., collat. iii; in Authent., De armis, collat. vi. Immo contra facientes incidunt in legem Iuliam maiestatis, ff. Ad leg. Iul. maiest., l. iii.

Septimum dicitur necessarium et licitum, quod faciunt fideles, iuris auctoritate se defendendo contra ipsos invadentes, nam vim vi repellere licet, ff. De iustit. et iure, l. *ut vim*, cum similibus. De his per Hostiensem, De homicidio, *pro humani*, Lib. VI; per Archidiaconum, in cap. *iustum*, xxiii, q. ii.

Ex his infertur quæ bella sint licita, et quæ illicita. Nam licita dicuntur ratione indicentis, illius contra quem, rei, et causæ, et iuris permittentis. Illi-cita econtra. Causa autem una generaliter iustificat, scilicet, contumacia iniuste resistentis. Cum enim ab eo qui obnoxius est iustitia haberi non potest, tunc licet bellum indicare, nam in subsidium recurritur ad illud suffragium, xxiii, q. i, *quid culpatur*, et cap. *noli*; xxiii, q. viii, *si nulla*; ff. De usuf., l. *si ususfructus*. Et de hoc, scilicet quod sit licitum, notatur per Innocentium, De resti. spol., *cum olim*, i; per Hostiensem, in Summa, De treu. et pace, § *quid si iustum*; per Beatum Thomam, in Secunda Secundæ, quæstione xl, articulo primo, secundo, et tertio; per Ægidium, in libro De regimine principum, in fine.

[Cap. lxxvii.]

De Bello Particulari quod fit ob tutelam sui, et est quartus tractatus tertii principalis.

Viso supra, tertio proximo principali tractatu, de Bello Vniversali Corporali, restat nunc, quarto, videre de Bello Particulari quod fit ob tutelam sui, et in ipsius tractatu sic procedam. Nam primo demonstrabo, quid sit. Secundo, quot sint species eius. Tertio, quo ordine inductum sit. Quarto, quibus liceat. Quinto, contra quos. Sexto, pro quibus liceat. Septimo, qualiter liceat. Octavo, quis sit ipsius finis.

[Cap. lxxviii.]

Quid sit Particulare Bellum ?

Circa primum, cum quæritur, quid sit bellum ob tutelam sui particulariter indictum, dico quod est "contentio exorta propter difforme humano appetitui præsentatum ex violentiæ particularis illatione proveniens, ad ipsius exclusionem tendens." Hæc probantur mentaliter per textum, l. *ut vim*, ff. De iustit. et iure ; et l. *[qui] scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil. ; et l. i, C. Vnde vi ; et l. iii, § *si quis*, ff. De vi ; et cap. *olim*, De resti. spol. Et dixi "contentio," nam contentio ponitur pro genere, ut posita est in definitione belli generaliter sumpti, ut supra primo tractatu in principio. Secundo dixi "exorta propter difforme," etc., et illud ponitur loco differentiæ, nam per hoc differt a bello universali et aliis speciebus belli. Tertio dixi "ad ipsius," etc. Hoc est causa finalis ipsius belli.

[Cap. lxxix.]

Quot sint species Particularis Belli ?

Circa secundum, cum quæritur, quot sint ipsius species, dico quod sunt duæ, nam quoddam iustum, quoddam iniustum, ut etiam divisi Bellum Vniversale. Bellum autem Particulare iustum est duplex, nam quoddam fit propter tutelam veri corporis, vel adhærentium, sive contingentium verum corpus. De hoc in præsentī tractatu discutiam. Aliud fit propter tutelam corporis mystici, vel partis, ut dicimus in universitate, quæ appellatur corpus, et singuli appellantur membra et partes, ff. Quod cuiuscunque univer., l. i ; ff. Ad municip., l. *quod maior* ; ff. De in ius vocand., l. *sed si hac*, § *qui manumittitur* ; De excess. prælat., l. *cum dilecta*, et ibi nota. Si igitur universitas propter defensam civis sui ab extraneo oppressi, deficiente iustitia iudicis opprimentis, bellum indicat, hoc appellatur "Particulare propter tutelam mystici corporis, sive partis," et hoc appellatur "Represalia," de qua in Authent., Vt non fiant pignor., per totum ; De iniur., cap. uno, per totum, Lib. VI. Et de hoc bello dicetur infra tractatu proximo. Bellum autem iustum, particulare, ob tutelam veri corporis indictum, est contentio exorta propter difforme humano appetitui præsentatum, proveniens ex illatione violentiæ particularis a privata vel publica persona, extra officium iniuste inferente, ad ipsius exclusionem tendens, cum moderamine inculpatæ tutelæ, ut hæc probantur in l. i, C. Vnde vi ; cum ibi nota. Iniustum autem est ubi prædicta, vel aliquod prædictorum, deficiunt, ut in [præcedentibus] sequentibus declarabitur.

Quo iure introductum sit particulare bellum ?

[Cap. lxxx.]

Circa tertium, cum quæritur, quo iure hoc proveniat, et competat, glossa quæ est in l. *ut vim*, ff. De iustit. et iure, super verbo "iure," dicit "iure fori, non iure cœli." Si glossa intelligit quod iure fori proveniat hoc bellum, credo quod glossa non dicat verum. Si autem glossa intelligit quod iure fori indici possit impune, credo quod glossa dicat verum. In eo autem quod glossa dicit "non iure cœli," credo quod glossa dicat falsum. Redeo ad singula, et dico quod bellum ob tutelam sui provenit a iure naturali, non autem a iure positivo, civili vel canonico. Quod hoc sit verum probatur sic. Nam natura productiva cuiuscunque tendit in ipsius conservationem, donec se extendunt vires naturalis agentis, et nititur in expulsionem cuiuscunque contrarii, et si secus contingat, hoc contingit propter defectum virium naturaliter agentis, et superabundantiam agentium in contrarium. Nequaquam autem hoc contingit ex intentione agentis naturalis, productivi et conservativi, immo contra intentionem, cum semper contrariis resistat, quantum potest. Hoc patet ex sensatis, inducendo per singula naturalia. Nam in elementalibus quæ agunt et patiuntur adinvicem hoc patet. Nam passum resistit agenti, et reagit in ipsum, solum ad finem conservationis sui esse, et destructionem agentis in contrarium. Et agens corporale materiale semper agendo repetitur, ut inquit Philosophus, iii Physicorum, et secundo De generatione. Hoc patet in istis inanimatis, hoc in plantis, nam privata ipsarum natura tendit in conservationem ipsarum et vitam, et contrariorum expulsionem, hoc in brutis, et quare non sic in rationali creatura hoc contingat, immo fortius cum ipsa ceteris sit nobilior, et in ipsam, ut finem, alia ordinentur, ff. De usuris, l. *in pecudum*⁹. Provenit ergo defensa ex instinctu naturali. Hoc probat textus in Clem., *pastoralis*, § *ceterum*, De sententia et re iudicata. Ibi dicit textus, "defensionis quæ a iure provenit naturali." Hoc sentire videtur glossa quæ est in l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquiliam. Ibi dicit glossa, "iura permittunt eo ipso quod non prohibent." Hoc probat textus in l. *itaque*, ff. Ad leg. Aquiliam. Ibi dicit textus, "adversus periculum naturalis ratio defendere permittit." Concludo igitur ex hoc passu quod hoc bellum, restringendo ad indictum ob tutelam corporis sui, provenit ex iure naturali et ipsius instinctu, sed ius positivum approbat, vel non prohibet, ut dicit glossa in l. *scientiam*, § *qui cum aliter*. Nam aliqua provenientia instinctu naturæ iura positiva puniunt, ut patet in carnali copula; nam simpliciter coitus provenit ex naturali instinctu, sed tamen quosdam coitus damnat lex. Et in hoc ius positivum limitat et qualificat actus provenientes a iure naturali. Sic in singulis actibus a natura provenientibus, nam naturaliter quis appetit cibum et potum, et tamen lex canonica limitat. Nam quosdam cibos certis temporibus inhibet. Verum est quod lex positiva etiam qualificat modum defensæ, ut patet in l. i, C. Vnde vi; et patebit per infra notanda. Concluditur igitur hoc provenire a iure naturali, sed approbato a iure positivo, tam civili quam canonico, et etiam qualificato et modificato eodem. Et in hoc forte salvari potest glossa quæ est in l. *ut vim*, ut sic intelligatur.

Secundo dicebat glossa, "non iure cœli." Videtur sentire glossa quod iure divino non permittatur vim vi repellere. Pro hac opinione glossæ videntur facere textus, nam scribitur Lucæ vi, "Si quis te percusserit in unam maxillam, præbe ei et aliam"; xxiii, q. i, in principio. Scribitur etiam "Si quis angariaverit te mille passus, vade cum eo duo millia," [Iohannis vi, et] Matthæi v. Scribitur etiam ad Romanos, xii cap., "non vos defendentes, sed date locum iræ." Christus etiam dixit Petro volenti eum defendere, "Converte gladium tuum in vaginam," Matthæi xxvi; et habentur xxiii, q. i, in principio. Hæc potuerunt movere glossæ ad tenendum quod non liceat iure poli. Sed credo quod glossa non dicat verum, quod aperte demonstrari potest. Et primo sic. Ille actus est licitus iure divino qui est consonus caritati, sed defensa suiipsius est huiusmodi. Ergo. Probatur maior, nam caritate posita, excluditur quilibet actus lege divina reprobis, cum ipsa se non compatiatur cum reprobo, cum sit ipsa fundamentum cuiuslibet liciti. Probantur hæc De Pœnit., dist. ii, [*si*] *radicata*, et cap. *caritas est, ut mihi videtur*. Et secundum in cap. *quia radix*, distinctione eadem, probatur minor. Nam præcipuus actus caritatis est diligere proximum sicut seipsum, ut in canonibus proximis, et cap. *caritas est, § proinde*, De Pœnit., dist. ii, ergo implicat dilectionem sui, et sui conservationem, si sic, ergo defensam. Ergo iure poli licet seipsum defendere. Præterea lege divina licitum est proximum defendere a morte etiam contra voluntatem suam. Ergo multo fortius iure divino licet seipsum defendere. Consequentia tenet per inducta supra proximo. Probatur antecedens per textus xxiii, q. iv, *ipsa pietas*, et cap. *displicet*. Præterea lex divina inhibet quem voluntarie tendere ad destructionem suiipsius. Hoc solum intendo et dico. Hoc solum intendo, nam si ordinate tendat in aliud lege divina approbatum, licet illud consequendo consequenter sequatur destructio, hoc non est inhibendum, utpote quis, ut consequatur statum beatitudinis æternæ affligit corpus suum, nulli dubium quin afflictio sit corporis destructoria, tamen non tendit in hoc finaliter, sed in fugam vitiorum carnalium, et consecutionem status æterni. Sic etiam dici posset de trucidatis voluntarie propter fidem catholicam, nam ipsi non intendunt finaliter ad destructionem sui corporis, immo defensam fidei, [quam] pro qua voluntarie exponunt se morti temporali, quod licet lege divina, sed se non defendens a morte, cum potest, se voluntarie occidit et in destructionem sui tendit, ergo lege divina inhibendum. Probatur maior, nam lege divina damnati reputantur qui sic seipsos occiderunt, ut dicimus de Iuda, et similibus. Probatur minor, nam se non defendens a morte, cum potest, nec subsit aliquis de casibus antedictis, nec hoc proveniat ex pusillanimitate, sui mortem appetit, et per alium se occidit, et sic perinde ac si per seipsum, iuxta regulam "qui per alium," ut regula *qui per alium*, De reg. iur., Lib. VI. Præterea lex divina non destruit totaliter actus provenientes a iure naturali, sed ipsos modificat et refrænât. Hoc patet per singulos discurrendo, nam non penitus inhibet cibum et potum, non copulam, nec similia, sed ipsos actus modificat et refrænât, extremitates reiciendo, medium approbando, ut etiam lex moralis, ii Ethicorum, iii et iv. At si lex divina inhiberet totaliter defensam suiipsius, cum actus ille

proveniat ab instinctu naturæ, totaliter destrueret actum naturæ, quod est absurdum, ut supra. Præterea lex canonica hoc permittit, ergo divina non inhibet. Probatur antecedens per De restit. spol., cap. *olim* ; et Clem., *pastoralis*, § *ceterum*, De re iudic. ; clarius per Clementem, *si furiosus*, De homicidio. Consequentia tenet, nam lex canonica subalternatur legi divinæ, et sic sibi invicem contra dicere non possunt, nam in eundem tendunt finem, licet varie. Nam lex canonica tractat de gubernatione monarchiæ mundanæ, ut societas humana conservetur in universo, quod etiam tractat lex civilis, sed canonica ulterius tendit, scilicet, disponendo et præparando ad statum æternæ beatitudinis, in quam tendit lex divina, et sic necesse est, indemnitate finis attentata, omne inhibitum lege divina fore inhibitum lege canonica. Et sic, prætermis aliis quæ infinita possent induci, restat concludendum quod glossa non dicat verum, cum dicit iure cœli non permitti defensam suiipsius.

Ad auctoritates autem in contrarium inductas respondetur, ut respondet magister Gratianus, xxiii, q. i, § *his ita*. Respondetur, videlicet, quod intelligentur de interiori cordis præparatione, non autem de interiori ostensione corporis, nam interius debet humilitatem cordis habere, ut probat Augustinus in Sermone de puero centurionis, sic inquit, " Paratus debet esse," etc. Vide in cap. *paratus*, xxiii, q. i.

Ex his infertur tertium, videlicet, unde insurgat hoc bellum, et quo iure permittatur.

Quibus personis liceat hoc particulare bellum indicare ?

[Cap. lxxxi.]

Circa quartum, videlicet, quibus competat et liceat, est videndum. Pro cuius evidentia præmitto quod aliud est quærere quibus competat defensa suiipsius, et aliud est quærere quibus competit bellum supra definitum, inductum propter defensam. Si quæramus cui competat defensio, dico quod omnibus entibus naturalibus genitis et corruptibilibus. Et dico genitis et corruptibilibus, nam corporibus cœlestibus non competit defensio, propterea quia non possunt pati ab aliquo contrario agente, cum illa corpora non sunt receptiva peregrinarum impressionum, ut ait Philosophus, secundo Cœli et Mundi, cum sint sine materia quæ est materia generationis et corruptionis, ut ibidem. Et sic non est opus defensa, cum sint impassibilia. Omnibus autem materialibus competit ex principiis naturalibus defensio, cum sint passibilia, et provenit illa defensio ex iure naturali, quod est vis quædam insita rebus, similia de similibus procreans. Nam similia procreando conservat seipsam in specie quod fieri non potest perpetuo individualiter, et etiam individualiter agendo nititur corrumpere contrarium sibi resistens et econtra. Et iste est primus modus iuris naturalis, de quo glossa in can. *ius naturale*, i distin. ; et notari consuevit in l. i, § *ius naturale*, ff. De iustit. et iure. Sic ergo sui defensio competit quibuscunque materialibus naturaliter, et provenit ex viribus a natura cuilibet enti insitis, ut quilibet posset sensualiter inducere, per singula naturalia discurrendo. Si autem quæramus quibus competat bellum supra definitum, tunc dico

quod solis hominibus, et non aliis, quod probat definitio belli, quam dixi, " difforme appetitui humano propositum," etc. Et hic quærendum an omnibus hominibus competat.

[Cap. lxxii.]

An clericis competat hoc bellum indicere ?

Et primo quæro an clericis liceat et competat hoc bellum indicere. Quod clericis non liceat probatur per cap. *suscepimus*, De homicidio ; et per can. *seditionarios*, xlv dist. ; probat textus xxiii, q. viii, cap. i et cap. *cum a Iudæis*, cum capitibus sequentibus, usque ad cap. *his*. Ita respondetur. Probatur per cap. *convenior*, eadem causa et quæstione. Quod liceat, probatur per cap. *olim*, De restitutione. spol. ; et cap. *si vero*, et cap. *ex tenore*, De sent. excom. ; i dist., *ius naturale* ; ff. De iustit. et iure, l. *ut vim* ; ff. De vi, l. iii, § *si quis*. Clarius textus in Clem., *si furiosus*, De homicidio. Super hoc fuerunt opiniones quas recitat glossa, xxiii, q. i, in summa, et eadem causa ; et q. viii, in summa ; nam aliqui dixerunt quod nulli, etiam laico, licet vim vi repellere percipiendo, sed bene impediendo. Hanc opinionem reprobatur Clemens, *si furiosus*, De homicidio. Alii, quod laicis licet percipere, clericis non, et hæc eodem morbo laborat. Alii dicunt quod, si vis inferatur personæ, licitum sit vim repellere, etiam percipiendo, et clericis. Hoc probat Clem., *si furiosus*, si adsint illa de quibus in dicto Clemente. Si autem rebus inferatur, tunc secus. An autem hoc secundum sit verum, infra subicietur. Hugo noluit dicere quod in nulla necessitate positus, etiam si aliter evadere non possit, non debet alium occidere, immo potius debet se permittere occidi. Ita notavit in can. *de his*, l. distinctionis. Glossa ibi notat contrarium ; et in cap. *sicut dignum*, De homicidio. In hoc non insisto, quoniam, ut dixi, est textus in Clem., *si furiosus*, De homicidio, et si non foret textus super hoc expresse disponens, pro vel contra, hoc esset tenendum per rationes quas induxi ad probandum, hoc non esse inhibitum lege divina.

[Cap. lxxxiii.] *An, etsi clerico liceat se defendere etiam occidendo, hoc sibi liceat in ecclesia ?*

Secundo quæro, an, si liceat clerico se sic defendere, etiam percipiendo et occidendo, an hoc sibi liceat in ecclesia ? Et videtur quod non, nam licet lex permittat generaliter certos actus, inhibentur tamen ratione loci, unde generalis permissio restringitur per specialem provisionem, ut l. *sanctio legum*, ff. De pœnis ; l. *alimenta*, § *basilicæ*, ff. De alim. leg. ; l. *uxorem*, § *felicissimo*, ff. De legat., iii ; et cap. *pastoralis*, De rescriptis. Sufficit regula *generi*, Lib. VI. Quod autem multi actus lege permittantur generaliter, qui tamen specialiter interdiciuntur, probat textus in cap. *decel*, De immun. eccles., Lib. VI ; et cap. *vendentes*, i, q. [i] iii. Ergo sic in proposito, et multo fortius, cum per hunc actum possit pervenire ad pollutionem ecclesiæ, ut cap. *proposuisti*, De consecr. eccles. vel altaris ; et cap. unico, eod. tit., Lib. VI. Præterea rixæ et contumelie sunt generaliter interdictæ in ecclesiis, ut cap. *decel*, statim allegato.

Ergo et hic actus, cum sit species rixæ. In contrarium iura hoc permittentia generaliter loquuntur, ergo sic sunt intelligenda, ut l. i, § *generaliter*, ff. De lega. præstandis. Hanc partem credo veram, cum iste actus insurgat ex iure naturali, nec reprobet lex divina, et ratio iuris hoc inducentis subsit generaliter, non habita distinctione locorum. Nam hoc induxit ius naturale, ut seipsum conservet quantum durant vires principiorum naturalium, et hæc ratio subest in ecclesia sicut alibi. Ad inducta in contrarium facile est respondere, nam illi actus inhibiti in ecclesia vel sunt de natura sui de genere malorum, vel sunt de genere permissorum, ut contractus. Tamen ipsorum exclusio, ne fiant in ecclesia, propter moram grande non inducit periculum, cum extra ecclesiam æque fieri possint ad libitum contrahentium, cum sint a principio voluntatis, ut l. *sicut*, C. De act. et obligationibus. At in proposito, si non liceret in ecclesia vim vi repellere, ecce promptum periculum, quia statim faciliter occideretur. Ad aliud, cum dicitur, sequi posset pollutio. Solutio. Fortius est considerata hominis conservatio, cum sit irrestaurabilis, quam ecclesia, quæ reconciliari potest. Et forte dici posset quod ad hoc, ut polluetur, requiritur effusio sanguinis iniuriosi, ut nota in cap. unic., De consecra. eccle. vel altaris, Lib. VI.

An liceat clerico celebranti invaso se defendere, et occidere, et sic continuato officio celebrare ? [Cap. lxxxiv.]

Tertio quæro, quid de clerico celebrante, an ei sit licitum dimisso officio, si invadatur, se defendere, et occidere, et numquid, si sic se defendendo occideret, licitum sit, continuato officio, celebrare ? Pro primo apparet quod non debeat divertere ab officio, immo ipsum teneatur exsequi donec possit, videntur textus vii, q. i, *illud*, et cap. *nihil*. Præterea temporalia sunt postponenda spiritualibus, xii, q. i, *præcipimus* ; De pœnis et rem., *cum infirmitas* ; C. De episcop. et cler., l. *sancimus*. In contrarium probant textus, nam propter impedimentum corporale superveniens, officium inchoatum dimittitur inexpectum, et propterea provident iura ne solus sit sacerdos in ecclesia ubi subest facultas bonorum temporalium. Probant textus in capitulis statim allegatis ; vii, q. i, *illud*, et cap. *nihil*. Vt unus suppleat continuando, ubi alter dimisit, De consecratione, dist. ii, cap. ult. ; nisi oratio missæ sit cœpta et non completa, quia tunc alter reincipere tenetur, cum illa non recipiat divisionem, ut in baptismo et ordine, ut xxiii dist., *quorundam*, et ibi nota glossam, et in cap. *nihil*, etiam notanda glossa. Sed si aliquis invadat celebrantem, ut ipsum occidat, hic evenit impedimentum celebranti immo periculum mortis, ut claret, ergo licitum prætermittere, et, per consequens, se de periculo sibi occurrenti, si potest, expedire, etiam occidendo. Ad allegata in contrarium facile est respondere, nam licet spiritualia sint præponenda temporalibus in genere, tamen celebratio spiritualium hoc casu non est præponenda, cum hoc casu, propter damnum irreparabile, lex hoc permittat quod non contingit in spirituali postposito, quia per alium restaurari potest, vel eundem, periculo excluso. De

secundo, sine argumentis dico, quodsi etiam occiderit, se defendendo, quod poterit reassumpto officio celebrare, dummodo affuerint illa de quibus loquitur Clem., *si furiosus*. Nam nullum peccatum, cum hoc fecerit legis auctoritate, cuius auctoritate nemo peccat, ut in cap. *qui peccat*, xxiii, q. iv; unde nullam irregularitatem incidit, ut in prædicta Clem., *si furiosus*. Ergo nullum videtur subesse impedimentum quin possit celebrare, ut probat Clemen., statim inducta.

[Cap. lxxxv.] *An baptizanti, ordinanti, confirmanti, inungenti, et singula sacramenta conferenti, invasis, licitum sit collationem illorum sacramentorum postponere inchoatam?*

Quarto, sic posset quæri, argui, et solvi, de baptizante, ordinante, inungente, etiam in singulis sacramentis, an sit licitum illorum collationem postponere, etiam si inchoaverit propter tutelam sui? Et in omnibus dic ut supra.

[Cap. lxxxvi.] *An præligenda sit mors⁽¹⁾ invasi sacerdotis, cum puerum in mortis articulo baptizat, an vita æterna ipsius pueri, ne decedat sine baptismo?*

Quinto quæro, sacerdos baptizat puerum, qui est in mortis periculo, et incidit invasio sacerdotis, ut occidatur, quid præligendum de iure, an perficere collationem sacramenti, ne decedat puer sine baptismo, et ipse sacerdos occidatur, vel econtra, præligendum mortem propriam evadere, et permittere puerum mori sine baptismo? Sic forma quæstionem de sacerdote differente corpus Christi infirmo in extremis laboranti.

Pro primo apparet quod sacerdos potius debeat se permittere occidi quam puerum sine baptismo mori. Nam si puer moritur sine baptismo moritur æternaliter, ut probat Augustinus ad Petrum Diaconum, De consecrat., dist. iv, *firmissime*, et cap. *regenerante*, eadem dist., et cap. *nulla*, eadem dist. Probat Apostolus ad Ephesios iv cap., propter delictum unius omnes in damnatione. Sic originale peccatum, cuius effectus non est extinctus per sacramentum baptismatis, inducit damnationem æternam, sed sacerdos solum temporaliter moritur, si alias necessariis ad salutem æternam imbutus, sed mors temporalis postponenda est spirituali. Sic arguit Augustinus, xxiii, q. iv, *displicet*, et cap. *ipsa pietas*; ergo potius debet sacerdos eligere mori, ut puer in æternum non pereat. Præterea inter duo mala minus malum est eligendum, xiii dist., *nervi testicularum*, cum similibus; at minus malum est mors temporalis quam æterna, ut cap. *ipsa pietas*, et cap. *displicet*, xxiii, q. iv. Et mors pueri est æterna, ut cap. *firmissime*, et cap. *nulla*, et cap. *regenerante*, De consecr., dist. iv. Mors autem sacerdotis est temporalis, ergo præligenda. Præterea præcipuus actus caritatis est quod quis proximum diligat sicut seipsum, De Pœnit., dist. ii, *proximos*, et [cap.] § *proinde*, et cap. *caritas est, ut mihi videtur*. At hic sacerdos, si præligat salutem æternam puero vitæ suæ tempo-

rali, non diligit ipsum sicut seipsum, et sic caritate carebit. quod probatur. Nam vita æterna sine comparatione præcellit vitam temporalem. Ergo præeligendo vitam temporalem sibi vitæ æternæ proximi multo magis se diligit quam proximum, et sic remanet caritate vacuus. Præterea illud præeligendum est ad cuius productionem pauciora mala sequuntur, sed ad mortem sacerdotis minus malum sequitur quam ad mortem pueri sine baptismo, ergo præeligenda mors sacerdotis. Probatur maior. Nam hæc est regula in moralibus, quod plura mala, ceteris paribus, deteriora sunt paucioribus, et magis fugienda. Probatur in can. *nervi*, xiii distinctionis. Probatur minor, nam si eligatur sacerdotis vita, sequuntur duo mala, scilicet, mors æterna pueri, ut supra deductum est, et neglectus curæ animarum, quod mortale, ut in can. *cum sit ars*, De æta. et qualitate. Si autem præeligatur mors temporalis sacerdotis, non sequitur nisi illud malum, scilicet, temporalis mors, quod, etiam attenta qualitate actus in se, sine comparatione minus malum est morte perpetua, ergo inferendum ut supra.

In contrarium videntur textus qui loquuntur generaliter, concedendo cui-libet facultatem se defendendi in casu necessitatis. Sufficit Clem., *si furiosus*, sæpius allegata. Confirmatur per iura quæ dicunt caritatem incipere a seipso, ut l. *præses*, C. De servit. et aqua; et cap. *petitio*, De iureiurando.

Solutio. Pro evidentia huius quæstionis et solutionis eiusdem est examinare casus indubitatos. Nam sunt casus indubitati in themate proposito. Ecce si ponamus quod puer per alium, etiam laicum vel mulierem, baptizari posset, esto quod sacerdos diverteret a sacramenti collatione, non esset dubium quod sacerdos deberet præeligere salutem suam, ubi enim verisimiliter puer posset vivere usque ad expeditionem periculi, et hoc verisimiliter constaret, non haberem quæstionem dubiam, quominus sacerdos haberet præeligere salutem suam, nec rationes inductæ concludunt contra hunc casum. Si poneremus quæstionem in adulto, non autem in infante, qui adultus, licet non suscipiat baptismum fluminis, tamen decedet, si veram habeat fidem cum baptismo fluminis. Adhuc non haberem quæstionem dubiam, immo dicerem, ut supra, præeligendam salutem sacerdotis. Sed quæstio procedit in puero, de quo constat quod morietur sine baptismo, si sacerdos divertat. Vel quæstio procederet in dubio, ubi, videlicet, de hoc probabiliter dubitaretur.

In primo casu, videlicet, ubi de hoc constaret, crederem præeligendam mortem sacerdotis temporalem, per iura supra inducta, et fundor per ea quæ habentur, vii, q. i, § *hoc etiam*, vers. *cum vero specialiter*. A contrario, et quod ibi notat glossa. Nam ubi solus prælatus quæritur, nec ecclesia potest esse tuta, eo fugiente, exponere debet se morti pro ipsa, ut ibi. Hæc maxime procedunt in proprio sacerdote et parochiano, et movent me rationes supra ad hoc inductæ.

Vbi autem foret dubium probabile de morte vel de vita pueri, usque ad expeditionem periculi, et constaret de morte presbyteri, nisi diverteret, adhuc crederem præeligendam mortem sacerdotis, cum in incertis non certus locus sit coniecturis, ut l. *continuus*, § *illud*, ff. De verbor. obligationibus. Vbi

autem probabile dubium foret hinc inde, crederem, ut supra primo membro hoc, in sacramento baptismatis.

In corpore autem Christi, si vera esset glossa quæ est in cap. *quod in te*, De pœnis et remiss., quæ dicit viaticum non esse sacramentum necessitatis, tunc quæstio non esset multum dubia. Sed illa glossa non est vera, immo alia glossa notat contrarium in cap. *veniens*, De transaction., in prima glossa, et illa est vera, ut notat De sacrament. non iterand., super rubrica. Probare videtur textus in cap. *omnis*, De pœn. et remissionibus. Tamen adhuc, hoc supposito pro vero, quod sit sacramentum necessitatis, adhuc dicerem præeligendam vitam temporalem sacerdotis. Moveor ex hoc, quia etiam si quis decedat sine corpore Christi, ubi per eum non stetit, et non contempsit, non moritur æternaliter, sicut in baptismo. Idcirco in hoc casu non concluderent rationes supra inductæ. Idem dicerem in sacramento pœnitentiæ, quia etiam sine oris confessione decedens, ubi per eum non stetit, sola contritionis virtus salvat eum, ut notat De pœnit., dist. i^o, in summa, et in § *his ita*. Idem per omnia dicerem in sacramento unctionis.

[Cap. lxxxvii.]

An monacho liceat se defendere sine licentia abbatis sui ?

Sexto quæro, numquid monacho liceat se sic defendere sine licentia prælati sui ? Videtur quod non. Nam monachus non vibrat, nec vibrare debet actum volitivum, nisi de licentia prælati sui, quia sine ipsius licentia caret velle et nolle, xii, q. i, *nolo*, et cap. *non dicatis* ; De electione, *quorundam*, et cap. *si religiosus*, Lib. VI ; et Clem., *religiosus*, De procuratoribus. At iste actus defensæ provenit a mero libertatis arbitrio, quia potest etiam nolle, ergo non poterit sine licentia prælati. Præterea monachus est mortuus mundo, xvi, q. i, *Monachi*, et cap. *placuit* ; ergo sibi non competunt actus tendentes ad defensionem vitæ. Præterea monacho interdicti sunt actus etiam in bonum tendentes sine licentia prælati sui, ut sunt vovere, peregrinari, et similes actus, per iura statim allegata. In contrarium videtur, nam defensio corporis sui provenit ex instinctu naturali, nec reprobatur lege divina nec altera, ergo licet monacho, cum quantum ad naturales actus non sit mortuus, sed solum quoad civiles actus, ut iuribus supra inductis.

Solutio. Credo quod, si monachus sine periculo moræ possit se defendere cum licentia prælati sui, ipsam petere debet. Hoc probant iura inducta ad primam partem. Si autem non possit licentiam prælati petere, quia non est præsens, et periculum est in mora, tunc poterit sine licentia prælati. Moveor ex hoc, quia iste actus est iure naturali inductus, quem prælatus non posset sine causa totaliter interdicere, immo forte nec Papa, cum natura hoc induxerit, nec in his subditus tenetur prælato suo, sicut si totaliter, et sine causa, interdiceret cibum et potum. Movet me glossa quæ est in cap. *non dicatis*, xii, q. i. Nam quærit ibi glossa an liceat monacho facere eleemosynam pauperi, fame morienti nisi subveniat ei, sine licentia prælati, et tenet quod sic. Nam hoc

casu necessitatis tenetur, si providere potest alterius vitæ per actum alias inhibitum sibi, quanto magis providere poterit vitæ suæ per actum sibi a naturalibus insitum. Non video quare, immo dicit Raymundus in summa De negot. sæcularibus, § *sed quæritur circa hoc*, quod, si abbas inhiheret, ipse facere debet, quia tunc non obediēt homini sed Deo, viii dist., *quo iure*.

An servo liceat se defendere sine iussu domini sui ?

[Cap. lxxxvii
bis.]

Septimo quæritur, numquid liceat servo sic se defendere sine iussu domini sui ? Videtur quod non. Nam actus servorum pro nullis habentur, ut l. [servus] *servum*, C. De rei vind. ; et l. *vix certis*, ff. De iudic. ; et l. *si quis mihi bona*, § *iussum*, ff. De acquir. hæreditate. In contrarium videtur, nam hodie mors servorum non est in potestate dominorum, ut l. i, ff. De his qui sunt sui vel ali. iuris. Confirmatur. Nam actus naturales non potest totaliter dominus interdicare servo, per quorum interdictionem servus pereat, ut l. supra prox. allegata. Solutio. Vt supra proximo dictum est de monacho.

An bannitis, qui per statuta civitatum quandoque impune occidi possunt, liceat se defendere ?

[Cap. lxxxviii.]

Octavo quæritur, numquid illis quos licitum est occidere impune, utpote bannitis, de quibus aliquando disponunt leges municipales, quod impune offendi possint, licitum sit se defendere ? Videtur quod non. Nam, si a privato iuste inferatur violentia, non licet se defendere, ut l. iv, ff. Ad legem Aquiliam. At hic iuste infertur, quia lege auctorizante, ut l. *iuste*, ff. De acquir. possessione. Confirmatur. Si violentia inferatur a publica persona, non licet se defendere, ff. De iniur., l. *iniuriarum*, § i ; ff. De rei vindic., l. *qui restituere*. At hic iste gerit vicem publicæ personæ, nam lex facit ipsum ministrum, permittendo privato ipsum punire, et hoc potest lex, scilicet, dare iurisdictionem privato, ut l. *et quia*, ff. De iurisd. omn. iudic. ; et cap. primo, Ne prælati vices suas, ubi notatur. Ergo infertur huic non licere se defendere.

In contrarium videtur, quia hic est privatus, immo etsi foret publica persona, apparet iniuste inferri violentiam cum inferatur iuris ordine non servato, et sic iniustitia ordine attento, ut l. *prolatam*, C. De sent. ; et cap. *quoniam contra*, De probationibus.

Secundo, puto ponderanda verba legis, nam aliquando lex permittit aliquid, quia nullo iure prohibetur, ut xxxi, q. i, *hac ratione*. Aliquando lex permittit aliquid contra constitutiones humanas, ut contrahere olim in quinto gradu, ut xxxv, q. iii, *quædam*. Tertio modo lex permittit tolerando, non quia faciat actum alias illicitum licitum, sed actum illicitum, manentem illicitum, non punit, ut dicit textus in can. *denique*, iv distinctione. Nam comedentes carnes in media nocte Dominicæ carniprivii non puniuntur, et dicit

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textus permitti, id est, non puniri propter multitudinem et scandalum, sic alias permittitur adulterium, ut vitetur homicidium, xxxiii, q. [i] ii, *si quod verius*; et tamen adulterium non fit licitum per legem sic permittentem, sed, actu manente illicito, poena remittitur. Sic in proposito, si lex permittat tolerando, et poenam remittendo, actu manente illicito, propter odium banniti, tunc crederem bannito licere se defendere, nec hunc articulum concludunt supra allegata. Si autem lex permetteret positive faciendo actum de illicito licitum, tunc secus. Et isti modi permissionis notantur per glossam, iii dist., *omnis autem lex*.

[Cap. lxxxix.]

Contra quos liceat hoc particulare bellum indicare?

Circa quintum, videlicet, contra quos hoc particulare bellum competat, est videndum. Et circa hoc quæritur de pluribus.

An liceat contra superiorem suum?

Et primo quæritur, an licitum sit alicui hoc bellum indicare contra superiorem suum? Et glossa in l. *ut vim*, ff. De iustit. et iure, dicit quod non; per l. *qui restituere*, ff. De rei vindic.; et l. *iniuriarum*, § i, ff. De iniuriis. Probat textus in cap. *qui resistit*, xi, q. iii. Ego non credo quod glossa dicat simpliciter verum, sed credo distinguendum. Aut constat quod iniuste agit, aut constat quod iuste, aut dubitatur. Primo casu, credo resistendum, ut l. *prohibitum*, C. De iure fisci; et l. *devotum*, C. De metatis. Et hoc maxime cum aliquid extra officium suum agit, ad ipsum non exspectans. Secundo casu non est resistendum, ut l. *qui restituere*, ff. De rei vindic.; et l. *qui iniuriarum*, § i, ff. De iniuriis. Tertio casu non est resistendum nisi tale sit factum quod non possit post tempus restaurari. Nam talia facta pro infectis haberi non possunt, ut l. *in bello*, § *facti*, ff. De captivis. Nam in talibus lex inhibens appellari ante definitivam permittit appellari, ut notatur in l. *ante sententiæ tempus*, C. Quor. app. non recipiuntur.

[Cap. xc.]

An liceat contra iudicem, etiam si iniuste aliquid agat?

Secundo quærit glossa in dicta lege, *ut vim*, quid si iudex, aut potestas, aliquid iniuste agat? Respondet Martinus quod non est resistendum, per legem *iniuriarum*, § i, ff. De iniuriis; sed conveniet magistratum durante officio, si est de minoribus, vel finito officio, si est de maioribus, ut ff. De iudic., l. *pars literarum*; et l. iii, ff. Quod met. causa. Hanc glossam non credo veram in facto irreparabili. Pone quod iudex invadat me, ut occidat, et est de maioribus magistratibus, numquid exspectandum sit donec finiatur officium? vel, si est de minoribus, debetne exspectari donec porrigatur querela coram præside? Absit, quia talia facta, ut supra dixi, sunt irretractabilia, ut prædicta l. *in bello*, § *facti*, ff. De captivis.

An liceat filio contra patrem ?

[Cap. xci.]

Tertio quæritur, numquid licitum sit filio contra patrem. Videtur quod non, propter ius patriæ potestatis, ut C. De pat. potest., per totum. Confirmatur. Nam non licet filio contra se, ergo nec contra patrem, cum censeantur una persona, ut C. De impub. et aliis substit., l. ult. ; Instit., De inutil. stip., § *ei qui* ; C. De agric. et censi., l. *cum scimus* ; in Authent., De iureiurando a moriente præstando, § i. In contrarium videtur. Nam hæc defensio provenit a iure naturali, ut probatum est supra, in tertio membro principali, nec aliqua lege reprobatur, immo qualibet approbatur, ut ibi deductum fuit. Ergo patria potestas, iure civili inducta, illud ius filio competens non tollit, cum iura naturalia civilibus non tollantur. Instit., De iure nat. gent. et civili, § *naturalia* ; v dist., *ius naturale*.

Solutio. Dico quod, si pater aliquid agat contra filium, corrigendo in his quæ permittuntur ex iure patriæ potestatis, non excedendo, quod non liceat filio se defendere, quia in hoc ius civile quod induxit patriam potestatem limitat ius naturale, quod fieri potest, ut supra deductum est. Si autem pater aliquid agat contra filium, excedendo sibi concessa ex iure patriæ potestatis, tunc crederem licitum sibi defendere. Et hæc procedunt in filio degente in potestate patris, in emancipato enim minor est quæstio. Ad inducta in contrarium patet solutio per iam dicta.

An liceat monacho contra abbatem suum ?

[Cap. xcii.]

Quarto quæritur, numquid monacho hoc liceat contra abbatem ? Videtur quod non, nam monachus caret vibramine voluntatis sine licentia abbatis sui, xii, q. i, *nolo*, et cap. *non dicatis* ; De statu monach., *cum ad monasterium*. Sed iste actus provenit ex imperio voluntatis, cum possit nolle, nec his intervenit licentia prælati, immo tacita et ficta contradictio, quæ plus operatur quam verbalis, ff. De ædilit. edict., l. *si tamen*, § *ei quod* ; ff. De legi., l. *de quibus*, in fine ; De appellationibus, *ad audientiam*, et cap. *ut nostrum*, et cap. *dilecti*. Confirmatur. Nam monachus mortuus est mundo, xvi, q. i, *monachi*, et cap. *placuit* ; et Authent., *ingressi*, C. De sacrosanctis ecclesiis. Ergo sibi non competit actus defensionis vitæ mundanæ.

In contrarium apparet. Nam iste actus provenit ex iure naturali, nulla lege positiva reprobato, licet modificato. Ergo non denegatur monacho, qui, licet sit mortuus civiliter, non tamen naturaliter, ut iuribus supra allegatis. Solutio. Si prælatus contra monachum aliquid attentet de his quæ permittuntur a iure communi, in corrigendo et similibus, vel ex constitutionibus ordinis, tunc monacho non licet resistere, immo nec hoc casu audiretur appellans, ut De appell., *cum speciali*, et cap. *de priore*. Si autem prælatus aliquid attentet contra monachum in his quæ non pertinent ad officium suum, iure vel constitutionibus modificatum, tunc licet se defendere, maxime in his quæ propter moram periculum ingerunt, utpote si abbas monachum invaderet, ut

ipsum subito occideret, quid miri cum etiam monacho liceat abbatem impetere, accusando, si aliquid contra debitum agat, ut cap. *ex parte*, De accusat., et cap. *cum olim*, eod. titulo.

[Cap. xciii.]

An liceat servo contra dominum ?

Quinto quæritur, numquid hoc liceat servo contra dominum. Apparet quod non, cum omnimodo potestas sit domini contra servum, ut l. i, ff. De his qui sunt sui vel alieni iuris. Confirmatur. Nam servus tenetur dominum proeliantem iuvare, alias punitur, ut l. *si quis in gravi*, ff. De S. C. Silaniano. Ergo ipsum impugnare non poterit, ut cap. uno, De nat. ex lib. ; et cap. *conquærente*, De restit. spol. ; ff. Si servit. vind., l. *altius* ; ff. De condic. indebit., l. *frater a fratre* ; xxvi dist., *una tantum* ; xxv dist., can. ult. ; xvi, q. i, *Silvester* ; ff. De fideiuss., l. *tutor* ; ff. De admin. tut., l. *quotiens*.

In contrarium apparet. Nam hodie restricta est potestas dominorum in servos, ut l. i, ff. De his qui sunt sui vel alieni iuris. Nam hodie non habent potestatem trucidandi, nec acriter eos affligendi. Ergo. Solutio. Vt dictum est de monacho, si dominus aliquid attentet contra servum in his quæ iura permittunt, non licet servo se defendere. Nam in hoc limitatur actus a iure naturali proveniens a iure positivo, limitante potestatem dominorum in servos. Si autem attentet aliquid ultra quam a iure permissum est, tunc secus, quia in his, licet servi non sint agniti quoad actus civiles, tamen quoad actus naturales sic, qualis est iste.

Per hoc solvuntur consimiles quæstiones. Numquid vassallo contra dominum ? Numquid discipulo contra magistrum ? Numquid militi contra præpositum ? Numquid uxori contra maritum ? Vniformi solutione solvuntur, ut, si attentetur quod ius permittit, non licet se defendere. Si autem ultra, et contra iuris debitum, tunc secus, ut supra plene tactum est. Ex his breviter infertur contra quos, ex regula supra dicta, possent quæstiones infinitæ solvi.

[Cap. xciv.]

Pro quibus personis liceat hoc particulare bellum indicere ?

Circa sextum est videre, videlicet, pro quibus liceat ? et primo circa personas pro quibus licitum sit. Et pono indubitatum quod pro defensione sui ipsius. Hoc probat textus in l. *ut vim*, ff. De iustit. et iure ; et l. i, § *vim vi*, ff. De vi et vi armata ; et l. iv, Ad leg. Aquil. ; et l. *scientiam*, § *qui cum aliter*, eod. tit. ; clare in Clemen., i, De homicidio. De aliis vero infra quæritur.

[Cap. xcvi.]

An liceat patri pro filio ?

Et primo quæro, an liceat patri pro filio ? Expediendo parum dubia sine argumentationibus, dicendum quod sic. Nam pater filium ut seipsum diligit, ut l. *isti quidem*, ff. Quod met. causa. Nam propter hoc perpetua-

tur in ævo, ff. De verb. sig., l. *liberorum*, in fine ; etiam quia una persona censetur, ut C. De impub. et aliis substit., l. ult. ; in Authent., De iureiur. a moriente præstito, in principio ; Instit., De inutil. stip., § *ei quem*. Hoc clarum. Idem econtra, scilicet, filius pro patre.

An liceat marito pro uxore ?

[Cap. xvi.]

Secundo quæritur, numquid hoc liceat marito pro uxore ? Clarum est quod sic, nam iniuria uxori irrogata est irrogata marito, et iniuriarum actio sibi competit, immo et sponso, ut l. *item apud*, § [*si sponsum*] *sponsum*, ff. De iniuriis. Et marito licitum est occidere vilem repertum adulterantem cum uxore, ut l. *marito*, et l. *capite quinto*, ff. De adulteriis ; et l. *Gracchus*, C. eod. tit. ; immo et fabulantem monitum, per iura Authenticorum, nec incidit in capitulum *si quis suadente*, xvii, q. iv. Ob hoc iniciens manus violentas in clericum, ut cap. *si vero*, § *nec ille*, De sent. excommunicationis.

An liceat pro fratre, sorore, et aliis coniunctis personis ?

[Cap. xvii.]

Tertio quæritur, quid pro fratre et sorore et aliis coniunctis personis, et non coniunctis ? Et glossa in l. *ut vim*, ff. De iustit. et iure, dicit ponderandam affectionem. Allegat l. *isti quidem*, ff. Quod met. causa ; et l. *cum servus*, ff. Mandati. Alii volunt dicere quod pro omnibus coniunctis licet. Probant sic, nam si quis iniuriatur uni coniuncto, omnibus iniuriari videtur, licet non competat aliis iniuriarum actio, ut l. *lex Cornelia*, in prin., ff. De iniuriis. Confirmant, nam pro defensione rerum licet vim vi repellere, ut l. i, C. Vnde vi ; et l. iii, § *eum igitur*, ff. De vi et vi armata. Et licitum est volenti vim vi repellere, pro defensione rerum, amicos et coniunctos convocare. Ergo licitum est amicos et coniunctos iuvare. Et sic concludunt pro coniuncto indistincte hoc licere. Hæc opinio confirmari videtur. Nam homo homini officium debet, ut l. *cum servus*, ff. De servis exportandis. Ergo ex illo officio iuvare licet. Confirmatur per l. *addictos*, C. De appell. ; melius, per l. *non tantum*, ff. De appell. ; ubi etiam extraneus pro condemnato in criminali appellat, etiam ipso nolente. Probatur per l. iii, C. De liberali causa. Dominus Iacobus Buttrigarius in l. *ut vim*, distinguit in hunc modum. Aut ego, ut ego, sine mandato iniuriati, volo defendere iniuriatum, et possum per viam iuris, non autem facti. Et sic intelliguntur ll. statim allegatæ, *addictos, non tantum* ; et l. iii, C. De lib. causa. Aut volo hoc facere, non ut ego, sed mandante iniuriato, et tunc potero etiam per viam facti, ut l. iii, § *eum igitur*, ff. De vi et vi arm. Alii distinguunt. Aut illi erant in comitiva iniuriam passi, et possent tunc propulsare iniuriam personæ eius illatam. Argumentum, l. *item apud*, § *si quis [virginem] virgines*, ff. De iniuriis. Alias non, ut tenet glossa indistincte in l. i, Vnde vi, ubi Cinus hanc opinionem recitat in antepenultima quæstione. Alii, ut Iacobus de Ravennate, dicunt indistincte quod

licet. Ratio. Nam negotia mea possunt iuvare per alium, ut l. i, ff. De negot. gestis. Multo fortius et persona iuvare poterit, cum persona rebus præferatur, ut l. *sancimus*, C. De sacrosanctis ecclesiis. Allegat pro casu, l. *Gracchus*, C. De adulterio; et, si dicas, ibi fuit filius, solvit per l. *liber homo*, ff. Ad leg. Aquiliam. Non obstat l. *cum fundum*, ff. De vi et vi armata. Nam ibi ex intervallo voluit, quod etiam non licuisset per se. Non obstat, secundum eum, l. *ut vim*, ff. De iustit. et iure; ubi dicit "ob tutelam sui corporis." Respondet per l. *si servus*, ff. De servis exportandis. Hanc opinionem videtur sequi Cuius in l. i, C. Vnde vi, in quæstione antepænultima.

In his tot et tantorum, crederem ponderandum, quia mixtim formavi quæstionem de coniunctis et extraneis, quod quæri potest, an liceat coniuncto vel extraneo alterius violentiam vi repellere, sicut liceret propriam, ad evitandam pœnam irregularitatis, si sit clericus vel laicus, hoc casu occidens vel mutilans. Potest etiam quæri de utrisque, an licitum sit, ut non incidant aliam pœnam legis vel canonis. Si quærat de primo, dico casum esse in Clement., si *furiosus*, De homicidio, quod solum evitat pœnam irregularitatis, si hoc faciat seipsum tantummodo defendendo, non autem alium, etiam patrem vel filium. Hoc probat textus, dicens, "Idem censemus de illo qui, mortem aliter vitare non valens, suum occidit vel mutilavit invasorem." Loquitur ergo de suo, non autem de invasore alterius. Hoc ibi etiam notat glossa super verbo "suum." Hoc ergo casu reputo planum, ut ibi. Si autem quæramus an liceat, ut vitentur aliæ pœnæ legales vel canonicæ, et tunc distingue. Aut loquimur de pœna excommunicationis, si hoc casu percutiat clericum, violentiam alterius repellendo vi, et tunc dico cum Innocentio quod, si defendat patrem, matrem, uxorem, filium, vel filiam, evadit sententiam excommunicationis. Allegat ipse l. *isti quidem*, ff. Quod met. causa; et l. i, § *si vir*, ff. De S. C. Silaniano. Et est ratio differentię inter hunc casum et præcedentem, nam irregularitas contrahitur etiam sine dolo, ut est videre in iudice iuste occidi mandante, li dist., *qui in aliquo*. Sed, in excommunicatione per illum canonem lata, requiritur diabolica instigatio, ut cap. *si quis suadente*, xvii, q. iv. In extraneis autem non evadit pœnam illius canonis, etiam si milies mandato iniuriati hoc fecisset. Aut loquimur de alia pœna personali vel pecuniaria, et tunc distingo, aut volentes vim repellere a violentiam passo, aut sunt coniuncti aut extranei. In coniunctis, dic, ut glossa in l. *ut vim*, ff. De iustit. et iure; eam limitando per l. *in privatis*, ff. De iudic.; et l. *lex Cornelia*, in princip., ff. De iniuriis. Aut loquimur de extraneis, et tunc aut illi extranei erant deputati pro comitiva violentiam passi, et tunc licet, ut l. *item apud Labeonem*, § *si quis [virginem] virgines*, ff. De iniuriis; aut non erant deputati pro comitiva, et tunc aut volunt ex intervallo repellere, et non possunt, ut l. *cum fundum*, ff. De vi et vi arm.; quia nec ipse propriam sic repellere posset. Et hoc de defensa facti. Defensam autem iuris facere possent etiam ex intervallo, ubi iura hoc permittunt, ut l. *non tantum*, ff. De appell.; et l. iii, De liber. causa; et l. *addictos*, C. De appellationibus. Et per hoc non puto veram opinionem Domini Iacobi Buttrigarii, qui dicit quod indistincte defensam iuris facere possunt. Nam hoc

indistincte non est verum. Nam sunt casus in quibus tertio non licet actionem seu accusationem proponere pro iniuriâ passo. Tollo exemplum regulare in privatis delictis. Sic ergo solum ubi iura permittunt. Si autem volunt incontinenti repellere, tunc distinguerem cum Domino Iacobo. Aut advocantur per violentiam passum, et tunc licet. Nam licet violentiam passo advocare amicos pro defensione rerum, ut l. iii, § *eum igitur*, ff. De vi et vi armata ; ergo pro defensione personæ, quæ præponderat, ut l. *sancimus*, C. De sacrosanct. ecclesiis. Aut non advocantur, et tunc licet. Textus est in cap. *dilecto*, De sent. excom., Lib. VI. Pro hoc faciat xxiii, q. iii, *non inferenda*, et cap. *fortitudo* ; De sent. excom., *quantæ*. Faciant notata in l. ii, C. De commerc. et mercatoribus. Et sic in hoc credo veram opinionem Iacobi de Ravennate. Textus est in prædicto cap. *dilecto*. Nam dicit ibi textus, " et cum liceat cuilibet suo vicino vel proximo, pro repellenda ipsius iniuria, suum impartiri auxilium."

An quis teneatur quem defendere ne occidatur ?

[Cap. xviii.]

Quarto quæritur, quis videt quendam occidi nisi iuvet ipsum, an teneatur ipsum iuvare ? Videtur quod sic, per l. *necare*, ff. De agnoscendis liberis. Confirmatur hoc ex officio quod debet homo homini, ut l. *servus*, ff. De servis exportandis. Hoc confirmatur. Nam error cui non resistitur approbari videtur, lxxxiii dist., *error*, et can. *consentire*, et can. *quid enim*. Nam licitum est alicui pretium recipere, ut metum illatum alteri excutiat, ut ff. Quod met. causa, l. *metum*, § *sed licet*. Confirmatur. Nam in quibusdam casibus hoc est speciale, quod quis teneatur alium sic iuvare, ff. De S. C. Siliano, l. i, § *hoc autem* ; et l. ult., C. eod. titulo. Ergo contrarium ius commune, ff. Ad municipalem, l. i ; et l. *ius singulare*, ff. De legibus. Glossa tenet quod iuvare tenetur verbo non facto, regula *culpa*, ff. De reg. iuris. Nec obstat officium quod debet homo homini, quia illud debet sine periculo sui, ut l. *habet*, ff. De oper. lib. ; et l. *Nepos Proculo*, ff. De verbor. significatione.

Quinto quæritur de his qui tenentur violentiam ab aliis propulsare.

[Cap. xix.]

Et circa hoc quæritur de pluribus.

An vassallus teneatur iuvare dominum suum ?

Et primo de vassallo quæritur. Et non est dubium quia tenetur iuvare dominum, alias perdit feudum, ut in Vsibus Feudorum, Quæ fuit prima causa beneficii amittendi, cap. *prima autem causa*, § *item qui dominum*, et § sequenti.

An servus teneatur iuvare dominum suum ?

[Cap. c.]

Secundo quæritur de servo, et quod teneatur iuvare dominum est textus in l. i, § *hoc autem*, ff. De S. C. Siliano ; et l. ult., C. eod. titulo.

[Cap. cl.]

An miles teneatur defendere præpositum belli ?

Tertio quæritur de præposito belli, et quod teneatur iuvare præpositum belli, si potest, alias capite punitur, est textus in l. *omne delictum*, ff. De re milit. ; et l. iii, § fin., ff. eodem.

[Cap. cli.]

An vassallus videns dominum invasum ex una parte, patrem ex alia, etc. ?

Quarto quæritur, vassallus videt dominum invasum ex una parte, patrem ex alia, uterque pariter est in mortis periculo, nisi iuventur, nec iuvare potest nisi alterum, quem iuvabit, patrem an dominum ? Glossa quæ est xxii, q. v, *de forma*, dicit quod vassallus tenetur iuvare dominum contra filium proprium. Inducit, quia filius tenetur patri iure naturæ, sed vassallus domino vinculo iuramenti, ut in Vsibus Feudorum, Quæ fuit prima causa benefic. amittendi, cap. uno. Et secundum hoc foret decisa quæstio, quia teneretur iuvare dominum cui plus astringitur. In hac quæstione dicerem contrarium. Et moveor ex hoc, nam filius tenetur patri ex vinculo naturali, ex quo ab eo progenitus est. Tenetur et vinculo civili, quia sub eius potestate patria, domino autem tenetur vinculo civili tantum, ut prædicto cap. *de forma*, xxii, q. v. Sed duo vincula vincunt unum in Authent., De consanguin. et uterin. fratribus, in principio. Confirmatur ratione prioritatis obligationis, nam prius est vinculum paternum vinculo dominico. Ergo primo ipsum iuvare tenetur, ut l. *potior*, et l. *qui balneum*, ff. Qui potior. in pign. habeantur. Confirmatur. Iuramentum præstitum domino intelligitur salvo vinculo præcedenti, nam ius alteri quæsitum non tollitur per secundam obligationem, ut dicta l. *qui balneum*, et l. *potior*. Confirmatur per cap. *petitio*, De iureiurando. Nam iurando domino de ipsum iuvando, non intelligitur iurasse sic quominus seipsum prius iuvet quam dominum, quia hæc prima caritas, ut l. *præses*, C. De servitutibus. Sed pater est eadem persona cum filio iuris fictione, ut l. ult. cum concordantiis, C. De impub. et aliis substitutionibus. Ergo.

[Cap. clii.]

An clericus videns episcopum suum invasum ex una parte, patrem ex alia, uterque pariter, etc. ?

Quinto quæritur, pone clericus videt episcopum suum invasum ex una parte, patrem ex alia, uterque pariter est in mortis periculo nisi iuventur, nec iuvare potest nisi alterum, quem iuvabit, episcopum vel patrem carnalem ? Hostiensis in cap. *gravem*, De excess. prælat., arguit ex verbo "fratri" quod ibi ponitur, quod plus astringuntur patribus spiritualibus quam carnalibus. Pro hoc facit cap. ii, De translatione. Si illa opinio esset vera, soluta foret quæstio. Sed tamen in hac quæstione credo, ut supra proxima quæstione induco, cap. fin.⁷³ De postulatione. Nam ibi dicit textus, "si postulaverit contra Ecclesiam, et non pro suis, perdit beneficium," ergo e contrario pro suis

posset. Induco, cap. *petitio*, De iureiur. ; inducendo ut supra proxima quæstione induxi, et faciant motiva supra proxima quæstione inducta, et glossa in cap. *pittacium*, xxx, q. iii, super verbo "multo magis," tenet quod in exhibitione temporalium magis tenemur patri carnali quam spirituali. In exhibitione autem reverentiæ, econtra. Idem notat glossa xxx dist., can. i. Faciant quæ notantur lxxxvi dist., *non satis* ; et can. *quiescamus*, xlii distinctione.

Pro quibus rebus licitum sit bellum indicere ?

[Cap. civ.]

Quia visum est supra hoc membro, an, et pro quibus personis, liceat hoc bellum indicere, nunc autem subsequenter quæritur, an et pro rebus defendendis licitum sit etiam hoc bellum indicere ? Et circa hoc quæritur de pluribus.

An liceat pro rebus iuste possessis ?

Et primo de rebus iuste possessis, et de his non est dubium. Textus est in l. i, C. Vnde vi. Probatur in l. iii, § *si quis autem*, vers. *eum igitur* ⁽⁷⁾. Alias est §, ff. De vi et vi armata ; et cap. *olim*, De restit. spoliatorum.

An liceat pro rebus iniuste possessis ?

[Cap. cv.]

Secundo quæritur, an pro rebus iniuste possessis hoc liceat ? Glossa in l. i, C. Vnde vi, hoc tractat. Et videtur quod non, a contrario sensu illius textus, quod est validum argumentum, ut l. i, § *huius rei*, ff. De offic. eius cui mand. est iurisd., et cap. *cum virum*, [De convers. coniugatorum] De regularibus ; et can. *hospitiolum*, xxxii distinctione. In contrarium videtur per textum, l. i, § *qui vi a me*, ff. De vi et vi arm. ; et l. *cum fundum*, eodem tit. ; et l. *si cum exceptione*, § *Pedius*, ff. Quod met. causa. Solutio. Pro hac legum apparenti contrarietate, glossa in dicta l. i dat plures solutiones. Primo, quod ibi subaudiatur "maxime," et tunc cessat contrarium, quia etiam pro vitiosa possessione licet. Secundo, solvit quod iungatur principium legis cum fine, ut dicatur, "recte licet." Sed tunc obstat quod dicit lex in medio "sine vitio." Ergo, a contrario, secus, ubi cum vitio. Tertio, quod iuste possidenti semper licet, sed vitiose possidenti non licet semper. Nam si dominus incontinenti veniat, non licet vitioso possessori sibi resistere, ut l. iii, § *eum igitur*, ff. De vi et vi armata. Quarto, exponendo recte, id est, non vi, non clam, non precario, et hæc non placet glossa. Sed Iacobus de Ravennate sequitur eam, quantum ad eum qui vult propulsare, ut si violentia inferatur ab eo a quo vitiose possidet, licet incontinenti, non autem ex intervallo. Si autem ab alio vitiose possideat, tunc quandocunque licet. Et hoc est quod dicit lex, quod adversus extraneos vitiosa possessio prodest, ff. Vti possid., l. ii ; ff. De acquir. poss., l. ultima ; ff. Si servit. vind., l. *loci corpus*, § *com-*
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petit. Hic videtur sentire Iacobum quod clandestinum possessorem licitum sit mihi expellere, si a me clam possideat, quia clandestina possessio est vitiosa, ut ff. De acquir. poss., l. *cum quis*. Pro hac opinione facit l. *si servus*, ff. Quod cum eo. Hanc opinionem videtur sentire glossa, ff. Vti poss., l. i, § *interdictum*, in medio magnæ glossæ ibi, "nec tamen volo," etc. Dinus ibi tenet contrarium, cum nulla lege hoc reperiatur cautum, quod clandestinum possessorem liceat mihi expellere. Præterea dicit lex, "vim vi repellere licet," sed qui clandestinam ingreditur, non infert vim, cum differant clandestina et violenta, ut l. *clam possidere*, § *qui ad nundinas*, ff. De acquir. possessione. In precario autem possessore procedere posset opinio Iacobi, post denegatam restitutionem. Nam tunc enim videtur spoliare dominum, ut notatur in l. *vitia*, C. De acquir. possessione.

In hac opinionum varietate crederem secundam solutionem glossæ fore veram, quam etiam sequitur Petrus de Bellapertica in dicta l. i, eam tamen sic ampliando, "Aut ego volens vim propulsare, iuste possideo, aut iniuste. Si iuste, aut volo incontinenti et cum moderamine inculpatæ tutelæ, et possum, ut dicta l. i; et l. i, § *vim vi*, ff. De vi et vi arm.; aut ex intervallo, et tunc non possum, ut l. iii, § *si quis autem*, vers. *eum igitur*, ff. De vi et vi armata. Secundo casu, scilicet cum iniuste possideo, aut possideo iniuste a te, contra quem volo vim propulsare, aut ab alio. Si a te, tunc aut vi, aut clam, aut precario. Si vi, tunc aut statim venis, ut recuperes, et non licet mihi resistere, et sic intelligitur, l. i, a contrario sensu, C. Vnde vi." Et iste est verus et rectus intellectus illius, si bene ponderatur, una cum allegatis in contrarium. Si autem venis ex intervallo, tunc licet resistere, quia nec tibi ex intervallo licet recuperare, auctoritate propria, immo incideres pœnam l. *si quis in tantam*, C. Vnde vi; et intellige ex intervallo, ut notat glossa ff. De vi et vi arm., l. iii, § *eum igitur*. Si autem non possideo vi, sed precario, tunc post denegatam restitutionem licitum est tibi incontinenti vim vi repellere, nec licet mihi resistere. Nam denegando videor spoliare, ut l. *vitia*, C. De acquir. poss.; et tunc procedit quod vim vi repellere licet, ante autem denegatam non procederet, licet possem revocare precarium, ut l. *cum precarium*, ff. De precario. Si autem possideo clandestine a te, tunc quidquid dicat glossa in l. i, § *interdictum*, ff. Vti poss., et Iacobus de Porta Ravennate, in l. i, C. Vnde vi. Credo cum Dino quod non sit licitum tibi me expellere, sed licet tibi ingredi et si te non admisero, extunc sit violenta, ut l. *clam*, § *qui ad nundinas*, ff. De acquir. poss.; et tunc procederet. Si autem non possideo vitiose a te, sed a tertio, tunc licet mihi contra te, quandocunque volentem mihi violentiam inferre, vim vi repellere, ut l. *Fulcinus*, § *quid si adversus*, ff. Ex quibus ca. in poss. eatur. Hæc dixi, salvo iudicio tot et tantorum super hoc dubio disputantium, subiciendo dicta quorumcunque correctionibus veritatem perquirentibus.

An, etsi liceat res defendere, defendens etiam cum moderamine inculpatæ tutelæ, si occidat, vel mutilet, evitet pœnam irregularitatis ? [Cap. cvi.]

Tertio quæritur, numquid vim vi repellendo circa res suas, si contingat vim repellentem occidere, vel mutilare, vim inferentem, evitet pœnam irregularitatis ? Et pono ubi hoc faciat cum moderamine inculpatæ tutelæ, quid alias non præcederet quæstio. Et videtur quod evitet. Nam pro defensione personæ, evitat pœnam illam, ut in Clem., *si furiosus*, De homicidio. Ergo pro defensione rerum probatur consequentia. Nam iura permittentia vim vi repellere parificant personam rebus, quia utroque casu licet, ut l. i, C. Vnde vi ; et l. i, § *vim vi*, ff. De vi et vi arm. ; et l. *scientiam*, § *qui cum aliter*, ff. Ad legem Aquiliam. In contrarium facit dicta Clemen., *si furiosus*, De homicidio. Nam ibi textus loquitur stricte de occisione vel mutilatione occisoris et sui. Et hanc credo veram, et moveor ex hoc. Nam irregularitatem contrahit quis occidendo vel mutilando, et sine dolo, ut patet in iudice, li dist., *qui in aliquo* ; et casu occidente, ut notat l dist., *de his* ; et cap. *sicut dignum*, De homicid. ; et cap. *sententiam*, Ne cler. vel monach. ; et cap. *in archiepiscopatu*, De raptoribus. Quilibet igitur occidens qualitercunque irregularis efficitur, nisi in casibus exceptis a iure. Cum igitur excipiatur casus defensæ, intelligitur ille casus stricte et modificate, ut ius excipit cum sit ius exorbitans, et sic stricte intelligendum, ut regula *quæ a iure*, De reg. iur., Lib. VI.

An pro rebus suis defendendis contra clericum, excommunicationem incidat, manus iniciendo ? [Cap. cvii.]

Quarto quæritur, an pro rebus suis vim vi repellendo contra clericum incidat excommunicationem, manus iniciendo ? Apparet quod sic, per capitulum *si quis suadente*, xvii, q. iv ; et cap. *nuper*, cum ibi notatis, De sent. excommunicationis. Confirmatur. Nam incidit pœnam irregularitatis, ut supra proxima quæstione. Ergo et hanc, cum ambæ sint pœnæ spirituales, et facilius quis incidat excommunicationem quam irregularitatem, ut claret. Solutio. Innocentius in cap. *olim*, De restit. spoliatorum, tenet quod non incidat excommunicationem vim vi repellens, si alias, nisi manus iniciendo, non possit vim repellere, et hoc faciat cum moderamine inculpatæ tutelæ. Hanc opinionem credo veram, et moveor, quia et quis incidat excommunicationem per manus iniunctionem in clericum violentam, debet subesse diabolica persuasio, quod probat textus in cap. *si quis suadente diabolo*, xvii, q. iv. Et si bene discurras per iura infligentia pœnam excommunicationis propter manum iniectam, non inuenies quod manus iniecta in clericum hoc casu sit aliqua de manibus de quibus iura exprimunt sic puniendo. Nam iura puniunt manum violentam, ut prædicto cap. *si quis suadente*, xvii, q. iv ; et De sent. excom., per totum. Hæc non est talis, immo est violentiæ repulsoria. Puniunt temerariam, ut in cap. *contingit*, De sent. excommunicationis. Hæc non est talis, immo discreta lege permittente, puniunt quasi violentam manum, ut cap. *nuper*, eod. titulo.

Hæc est vera manus et permissa. Puniunt necem, ut cap. *universitatis*, ut cum mandatur percuti ; et cap. *cum quis*, eod. tit., Lib. VI. Puniunt animum, ut dicto cap. *cum quis*, ut cum ratum habet suo nomine factum. Puniunt neglectum, ut cap. *quantæ*, eod. titulo. Hic nihil de prædictis.

Ad allegata in contrarium facile est respondere. Ad canonem *si quis suadente*, est responsum per supra dicta. Ad id quod dicitur de irregularitate, clara est ratio differentiæ. Nam excommunicationem nemo incidit sine dolo, irregularitatem sic, de quo dicitur, ut notat glossa, in Clem. *si furiosus*, sæpius allegata in pænultima glossa.

[Cap. cviii.] *An pro rebus defendendis, vocatis amicis, licitum sit subsidium impendere ?*

Quinto quæritur, an licitum sit, pro repulsa violentiæ circa res, advocare amicos, et eis licitum sit subsidium impendere ? Glossa in l. iii, § *cum igitur*, ff. De vi et vi armata, notat quod sic ; etiam illata violentia in rebus. Et hanc credo veram, et moveor. Nam, ut dicunt iura, licitum est obviare errori, ubi obviari potest. Alias non obviari consentire videtur, lxxxiii dist., *error*, et * cap. *qui consentit*, cum cap. sequenti. Igitur licitum est amicis in hoc iuvare proximum suum, ut supra dictum est, quia hoc provenit ex radice caritatis, ut cap. *proximos*, De Pœnit., dist. ii. Et si hoc licitum est, statim solvitur quæstio qua quæri posset, an incidat excommunicationem manus iniciens in clericum, sic violentiam propulsando, pro rebus proximi. Quia non incidit, cum non sit aliqua de punitis a canone, immo est permissa.

[Cap. cix.] *An pro rebus licitum sit contra omnes vim vi repellere contra quos licitum est pro personis ?*

Sexto quæritur, an pro rebus licitum sit contra omnes vim vi repellere contra quos licitum est pro personis ? Solutio. Quod sic, in personis quæ valent habere bona, ut excludam servos, monachos, et similes. Fateor tamen quod moderamen tutelæ diversificari debet, attenta varia personarum qualitate. Nam aliter, et mitius, contra patrem quam contra penitus extraneum, et sic de singulis quæ consideranda venirent, inspectis singulis circumstantiis, cum non sint hæc iure limitata, ut l. i, ad finem, ff. De iure deliber. ; et cap. *de causis*, De offic. iud. delegati.

[Cap. cx.] *An pro rebus depositis vel commodatis liceat vim vi repellere ?*

Septimo quæritur, an pro rebus depositis et commodatis sit licitum vim vi repellere ? Et videtur quod non, per l. i, C. Vnde vi, quæ loquitur de possessis, et iuste. At hæc non possidentur per commodatarium vel depositarium, ergo non licet in his vim vi repellere. Solutio. In his et similibus, vindicat

* *Supplendum* "xi, q. iii,".

sibi locum quod liceat vim vi repellere, nam pro talibus interdictum vi bonorum raptorum competit depositario, vel commodatario, si hæc sint rapta, ut l. *prætor ait quæ est lex, § in hac actione*, ff. Vi bonorum raptorum. Ergo multo magis ipsis defensa conceditur, ut regula *invitus, § cui damus*, ff. De reg. iuris; et l. una, ff. De fonte; regula *qui ad agendum*, De reg. iur., Lib. VI; etiam quia isti tenentur. Ergo. Non obstat l. i, C. Vnde vi, quia licet loquatur in possessione, non tollit tamen quominus in aliis detentatis, pro quibus iura detentantibus actiones concedunt, ut supra. Vel dic quod verbum "possidere" sumitur large, ut implicet iustam detentionem, ut l. *officium*, ff. De rei vindic.; et nota in cap. *pastoralis*, De causa possessionis et proprietatis.

Qualiter liceat hoc particulare bellum indicere ?

[Cap. cxii.]

Circa septimum principaliter quæsitum, videlicet, qualiter sit licitum vim vi repellere ? est videndum.

Quomodo licitum sit vim vi repellere cum moderamine inculpatæ tutelæ ?

Et huic respondet textus quod licet cum moderamine inculpatæ tutelæ.

Quid sit "moderamen inculpatæ tutelæ," et quæ in eo requirantur ?

Sed in dubium revocatur quid velint hæc verba, hoc est, quæ sunt illa quæ requiruntur ad hoc moderamen ? Communiter doctores dicunt quod sunt illa quæ æquivalent illatæ violentiæ, in qualitate armorum, in cursu temporis. Item æquivalentia in ipso actu violento ne alias excedendo censeatur vindicta, sed circa hoc dubitatur.

An liceat vili ei debili cum ense se defendere contra fortem et robustum, pugno tantum percutientem ?

[Cap. cxiii.]

Et primo pone fortis et robustus homo vult me percutere pugno, ego sum vilis, qui non possum resistere pugno. Numquid liceat mihi defendere me cum ense ? Videtur quod sic, quia æqualitas ubique est ponderanda, ut l. ult., C. De fruc. et lit. expen.; et l. *si cum dies*, ff. De arbitr.; regula *in iudiciis*, De reg. iuris, Lib. VI. In contrarium videtur. Nam, si quis vult mihi violenter surripere, et ego, viribus corporis impar, ipsum percutio cum ense, impune iam fieret compensatio corporis ad rem, quod esse non debet, ut l. ult., C. De sacrosanct. ecclesiis.

Iacobus de Arena distinguit, aut quis vult propulsare violentiam illatam personæ, aut illatam rebus. Primo casu, licet et cum armis et qualitercunque, si res aliter reparari non potest, ut l. *si quis*, De appell., Codicis. Nam si possum occidere furem ubi non cognosco, et si non potest mihi in rebus furatis provideri per iudicem, ut l. *furem*, ff. Ad legem Corneliam de sica.; multo magis licet occidere ubi persona aliter salva esse non posset. Secundo casu

quando pro rebus, tunc aut violentia rebus illata per viam iudicii reparari potest, et tunc non licet qualitercunque, immo cum qualitate armorum, non autem factorum, quia non debeo personam percutere pro defensione rei, ubi etiam aliter salva esse non possit, dummodo per viam iudicii reparari possit. Si autem per iudicium non potest reparari, tunc licet qualitercunque defendere, etiam personam occidendo, ut l. *furem*, ff. Ad legem Corneliam de sicariis. Et sic intelligitur l. i, C. Vnde vi; et l. iii, § *eum igitur*, ff. De vi et vi arm. Sic igitur intellige moderamen inculpatæ tutelæ.

[Cap. cxlii.]

An, etsi liceat incontinenti se defendere, quomodo intelligatur illud "incontinenti"?

Secundo quæritur circa concursum temporis, quia dicunt textus quod debet fieri "incontinenti." Quæritur quando intelligatur "incontinenti." Aliqui dicunt fieri incontinenti, si fiat in ipsa flagrantia facti, si autem fiat iam illata iniuria, tunc debet iudicem adire. Alii dicunt incontinenti fieri etiam si fiat post, antequam divertat ad actus extraneos, ut l. *quod ait*, in fine, ff. Ad leg. Iul. de adulteriis. Iacobus et Petrus distinguunt. Aut loquimur de violentia illata personæ, et tunc dicitur repelli incontinenti, si fiat in ipsa flagrantia facti. Sic intelligitur l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil.; l. *ut vim*, ff. De iustit. et iure. Aut loquimur de violentia illata rebus, et tunc dicitur incontinenti repelli, etiam post flagrantiam facti, dummodo divertat ad actus extraneos, ut ff. De vi et vi armata, l. *qui possessionem*; et l. iii, § *eum igitur*, eodem titulo. Ratio diversitatis est. Nam illata iniuria personæ non potest amplius restaurari, sed res ablata recuperari potest, et sic non facta diversione ad actus extraneos, etiam si amicos quærat, et redeat ut recuperet, dicitur incontinenti, ut notat glossa in dicta lege iii, § [*igitur*] *eum igitur*, ff. De vi et vi armata. Sic intellige moderamen in concursu temporis.

[Cap. cxiv.]

De æquivalentia in ipso actu violento. Qualiter fieri debeat?

Tertio quæritur de moderamine in æquivalentia in actu violento, videlicet, quia fieri debet ad defensionem, non autem ad vindictam. Et licet varie scribatur, totum hoc ponderari debet inspectis conditionibus personarum.

[Cap. cxv.]

An vindicasse videar, non defendisse, si spoliatorem meum de possessione mea expuli, qui, antequam expellerem eum, satisdare volebat de possessione restituenda?

Quarto quæritur, quis expulit me de possessione, et post expulsionem paratus est satisdare de restituenda, si appareat eum iuste non fecisse, sed nihilominus ipsum expello, numquid videor fecisse ad vindictam? Glossa

tenet quod sic, in l. i, C. Vnde vi; sed communiter glossa reprobatur. Nam non debuit se committere illi fragili cautioni, ff. Ad Treb., l. *quia poterat*, et l. *nam quod*, cum similibus.

An paratum ad me percutiendum exspectare debeam, vel eum prævenire? [Cap. cxvi.]

Quinto quæritur, numquid, si videam aliquem paratum ad percutiendum me, an debeam exspectare quod me percutiat, an debeam prævenire. Glossa in dicta l. i arguit pro et contra, et determinat quod non debeam exspectare. Petrus dicit glossam intelligendam habita distinctione personarum, nam aliqui sunt audaces et prompti ad percutiendum, et tales non sunt exspectandi, aliqui timidi, et tales non sunt statim præveniendi, et sic modificat glossam argutam, l. i, C. Si quis Imperatori maledixerit.

An miles quem vicinus aggreditur, censeatur vim vi repellere, si exspectet et percutiat, cum alias fugere valeat? [Cap. cxvii.]

Sexto quæritur, quidam egregius miles est aggressus a vicino suo, et evadere posset fugiendo, tamen, reputans sibi ad vituperium, exspectat, et resistit, et percutit, numquid censeatur vim vi repellere? Apparet quod non, per l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquiliam. Moderni doctores tenent contrarium per l. *in eadem*, ff. Ex quibus caus. maiores. Nec obstat § *qui cum aliter*, quia iste non poterat evadere sine periculo famæ suæ et honoris sui, quæ non possunt per iudicem reparari, ut l. *Iulianus*, ff. Si quis omissa causa testamenti.

An si vulneratus, post vulnera insequatur vulnerantem, et ipsum percutiat, puniri debeat ut dolosus, vel ut culpabilis? [Cap. cxviii.]

Septimo quæritur, quidam vulneratus, post vulnera insequitur vulnerantem, et ipsum percutit, quod non licet, ut l. *si ex plagis*, § i, et l. *qua actione*, § *si in colluctatione*, ff. Ad leg. Aquiliam; numquid punietur ut dolosus, an ut culpabilis? Quidam dicunt quod ut culpabilis, quia inconsultus calor vitio calumniæ caret, ff. Ad S. C. Turpil., l. i, § *quæri*; ff. Ad leg. Corn. de sica., l. [iii] iv, § *cum quidam*; ff. De poenis, l. *respicendum*, § *delinquent*. Alii dicunt quod ut dolosus, cum se vindicare non debuerit. Iacobus de Arena dicit primam opinionem humaniorem, ff. De poenis, l. *interpretatione*; ff. De reg. iur., l. *in totum*; secundam rigidiorum, C. De iniur., l. *si non convicii*. Credo primam veriore, etiam de iure, per iura prius allegata.

[Cap. cxix.]

An violentia illata personæ possit per amicos propulsari ?

Octavo quæritur, numquid violentia illata personæ possit per amicos propulsari, sicut illata rebus, ut notat glossa in § *eum igitur*. Glossa in l. i, C. Vnde vi, dicit quod non, per l. *cum fundum*, ff. De vi et vi armata. Alii distinguunt, aut amici erant in comitiva violentiam passi, aut non. Primo casu, licet, per l. *item apud Labeonem*, § *si quis virgines*, ff. De iniuriis. Secundo casu, non licet. Iacobus de Arena tenet indistincte quod licet. Nam si negotia nostra possunt per alios iuari, ut l. i, ff. De neg. gest., multo magis persona, quæ rebus præfertur, ut l. *sancimus*, C. De sacrosanct. ecclesiis. Probare videtur textus in l. *Gracchus*, C. Ad legem Iuliam de adulteriis. Non obstat l. *cum fundum*, quia ibi mandabatur ex intervallo, quod non liceret etiam principali. Huic opinioni obstat textus l. *ut vim*, ubi dicit textus "ob tutelam sui corporis," et Clem., *si furiosus*, De homicidio.

[Cap. cxx.]

An serviens, de mandato domini sui, ipsius uxorem interficiens excusetur ?

Nono quæritur, pone quidam mandavit servienti suo quod uxorem suam, quam habebat suspectam de adulterio, occideret, alias ipsum occideret, serviens interfecit, numquid excusatur ? Videtur quod non. Nam potius debet omnia mala pati quam malo consentire, ut l. *isti quidem*, in fine, ff. Quod met. causa. Videtur textus in l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquiliam. In contrarium facit l. *ut vim*, ff. De iustit. et iure ; nam hoc fecit ob tutelam sui corporis. Ergo. Iacobus de Ravennate distinguit, aut mulier erat alias peritura, aut non, ut l. *si quis fumo*, ff. Ad leg. Aquil. ; et l. *si alius*, § *est et alia*, ff. Quod vi aut clam. Petrus tenet indistincte servientem excusari, quia fecit ob tutelam sui corporis, ut l. *ut vim* ; etiam quia caritas incipit a seipso, ut l. *præses*, C. De servitut. et aqua ; item quia licet proprium sanguinem redimere, ut l. *transigere*, C. De transactionibus. Ego crederem distinguendum. An servienti incumberet necessario mortis propriæ periculum, nisi uxorem mandantis interficeret, et tunc crederem opinionem Petri veram. An foret aliqualis spes salutis, etiam domino resistendo, et tunc contrarium crederem, per iura supra allegata.

[Cap. cxxi.]

Quis sit finis particularis belli ?

Circa ultimum principaliter quæsitum, videlicet, quis sit finis huius belli ? Quæstionis huius patet solutio per supra dicta. Nam conservatio suiipsius et bonorum est finis huius belli, et in hoc finaliter tendit, et propter hoc est permissum, ut clare patet per supra deducta.

Quintus tractatus tertii principalis, scilicet, de Particulari Bello quod fit ob defensam corporis mystici, quod "Represaliæ" nuncupatur. Vnde et a quo ortum habuerint Represaliæ, et propter quid insurrexerint? [Cap. cxxii.]

Ampliando aliquantulum quæsitum et materiam represaliarum, præmittam fundamentum, propter quod insurrexerunt represaliæ. Quo præmisso, examinabo causas examinandas. Ecce Altissimus Creator a principio creavit cælum et terram, et quæ in eis sunt, necnon angelicam et humanam naturam, spiritualia et temporalia, et ipsa per seipsum rexit, et homini quem creavit præcepta dedit, et transgredienti pœnam imposuit, Genesis ii capitulo. Qualiter autem per seipsum rexit apparet, nam per seipsum, et non per ministrum, delicta puniebat. Nam Cain, Lamech, et quosdam alios reges, punivit, ut legitur Genesis iv et v capitulis. Et hæc mundi gubernatio processit usque ad tempora Noe. A tempore autem Noe cœpit mundum regere per ministros, quorum primus fuit Noe, de quo quod fuerit rector populi apparet. Nam Dominus commisit sibi gubernationem et administrationem arcæ, Genesis v et vi capitulis. Et per arcam significatur Ecclesia. Et qualiter Dominus Noe et filiis commiserit gubernationem legitur Genesis ix capitulo, et, licet Noe sacerdos non fuerit, legitur tamen officium sacerdotis exercuisse, antequam leges populo darentur, Genesis viii capitulo. In hac autem gubernatione et vicaria successerunt Patriarchæ, Reges, et Iudices, qui fuerunt pro tempore in regimine populi Iudæorum. Et illa duravit usque ad Christum, qui fuit naturalis Dominus et Rex Noster, de quo legitur in Psalmo, "Deus iudicium tuum regi da." Ipse autem Christus duo luminaria dimisit in terris, luminare maius et diurnum, scilicet, Summum Pontificem, luminare minus et nocturnum, scilicet, Romanorum Principem, quibus commisit administrationem et gubernationem mundi, uni in spiritualibus, et alteri in temporalibus. Tempore primitivo, quo Dominus per seipsum gubernabat, non fuit opus represaliis, cum per Dominum iustitia exhiberetur. Tempore Noe et successorum, in regimine populi Iudæorum, non fuit opus represaliis, cum per ministros iustitia exhiberetur, et subditi de populo recognoscerent superiorem cui obtemperabant. Tempore præcedente Summorum Pontificum et Romanorum Imperatorum, cum omnes subiciebantur et de iure et de facto, non erat opus represaliis, cum per principes, iuris ordine servato, iustitiæ complementum exhiberetur. Postquam autem Imperium paulisper cœpit exinaniri, adeo quod sint qui de facto nullum recognoscunt superiorem, et per eos iustitia negligitur, idcirco fuit opus subsidiario remedio, deficientibus ordinariis, quibus exstantibus, ad illud nullatenus recurrendum, ff. De minor., l. *in causæ*; ff. De oper. nov. nunci., l. *in provinciali*. Istud autem remedium extraordinarium ortum habuit ex iure gentium. Nam est quædam species belli liciti. Nam licitum est ob tutelam corporis sui arma movere, ff. De iustit. et iure, l. *ut vim*; C. Vnde vi, l. i; De restitut. spoliat., cap. *olim*; et nedum corporis sui privati et individualis, immo et mystici. Nam universitas est unum corpus, cuius partes sunt singuli de universitate, ff. Quod cuiuscunque universit., l. i; et sic universitati licitum est defendere partes sui corporis. Habuit etiam ortum a iure divino, ut legitur

xxiii, q. ii, cap. *Dominus Noster*. Ex prædictis omnibus infertur propter quid insurrexerit istud remedium. Nam, finaliter, ut iustitia debitum sortiretur effectum, occasionaliter, propter defectum remedii, insurgens a neglectu gubernantium et regentium populos, et carentia recognitionis superiorum de facto, quo tempore fuerit opus hoc extraordinario remedio. Ex quo infertur quod etiam hodie raro hoc remedium locum sibi vindicat. Nam, negligente iudice sæculari, recursus habendus est ad ecclesiasticum, De foro competenti, *ex tenore*, et cap. *licet*, et cap. *ex parte*; Qui filii sint legitimi, *per venerabilem*; licet etiam de facto male obtemperetur. Quibus sic prædiscussis, restat examinandum quæ sint causæ represaliarum, videlicet.

[Cap. cxxiv.]

De causis represaliarum.

Quæ sit causa productiva? Quæ formalis? Quæ finalis? Videndum est etiam de quibusdam quæstionibus circa hoc concurrentibus.

De causa efficiente, sive productiva, represaliarum.

Ad primum, quæ sit causa productiva, hoc est quærere, quis possit indicare represalias. Hic attendendum est quod, ut supra dictum est, nulla lege positiva, canonica vel civili, disponitur represalias indici debere. Nam utraque lege disponitur modus consequendi effectus iustitiæ. Immo inhibitum est occupare rem propriam, C. Vnde vi, l. *si quis in tantam*; et l. *exstat*, ff. Quod met. causa. Immo etiam hæc expresse inhibentur lege civili et canonica, ut in Authent., Vt pign. non fiant; et cap. uno, De iniur., Lib. VI. Sed deficientibus iuris positivi remediis, ad hoc fuit habendus recursus, ut fiat belli indictio, ne depereat iustitia. Hæc autem belli indictio spectat ad illum solum qui superiorem non habet, ut l. *hostes*, ff. De captivis. Nam habens superiorem auctoritate propria, non potest violare iuris remedia. Ille ergo indicare potest qui superiorem non habet, et de iure, vel de facto. Expedi etiam quod ille contra quem indicuntur non habeat superiorem, vel si habet, negligat iustitiam facere. Ex quo quidam inferunt quod potestas civitatis, quæ non recognoscit superiorem de facto, non possit indicare, nisi specialiter habeat in mandatis, sed haberi debet recursus ad universitatem, apud quam est plenum ius, et eius auctoritate indicentur. Istud non credo verum, ubi universitas transtulerit omnimodam potestatem in rectorem, nam tunc potest totum quod universitas, sicut dicimus in habente generalem cum libera, ut l. *procurator qui*, ff. De procuratoribus. Secus, si limitatam. Inferunt etiam quodsi Comes, Marchio, vel similis, subditus est Principi, quod sine Principis auctoritate indici non poterunt, argumentum prædictæ regulæ quam tradidit in cap. *olim*, i, De restit. spoliatorum. Et hæc procedunt loquendo de iure communi. Nam, si loquamur secundum dispositionem iurium municipalium, secundum quæ conceditur facultas indicendi represalias, illi indicare poterunt quibus a lege municipalis conceditur. Et hæc, ut dixi, conceduntur propter urgentem necessitatem,

sicut aliquando propter necessitatem concedit ius civile facultatem alicui ius sibi dicendi, ff. Quæ in fraudem cred., l. *ait prætor*, § *si debitorem*; ff. Quod vi aut clam, l. *alius*, § *bellissime*. Ex prædictis inferri potest quo iure petatur indictio represaliarum. Nam si vigore statuti concedantur conditiones, ex lege hoc petitur, ff. De conduct. ex lege, l. una. Si autem loquamur secundum dispositionem iuris communis, dicunt quidam quod nec actio nec officium intentatur. Ratio. Nam solo iure gentium hæc facultas conceditur, quo iure omnia expediebantur via regia, ff. De orig. iuris, l. ii, in principio. Sic dicunt hodie requiri manum regiam, secundum statuta divina et iure gentium. Hoc non credo verum. Nam licet facultas non sit nisi servetur modus traditus. Nam primo debet recurri ad remedia ordinaria, quibus deficientibus, ad hoc recurritur, et hoc constare debet iudici requisito, ut indicat represalias, et, si ille, contra quem petuntur, monitus comparuerit, auditur pro defensu^(sic), et infra dicetur, et sequitur sententia, qua pronuntiatur indicendas, vel non. Quarto fuit opus actione vel officio, nam secundum modum petitionis formari debet sententia, ut l. *ut fundum*, ff. Communi divid.; et cap. *licet Heli*, De simonia. Confirmatur. Nam licet de iure gentium hæc facultas processerit, tamen de iure civili approbata est, ex mente ipsius, licet non verbis expressis. Nam est ex mente iuris civilis, immo etiam ex verbis, quod contra rebelles et inobedientes iuri procedatur manu militari, ut l. *qui restituere*, ff. De rei vindicatione. Et sic proditum est remedium implorationis officii, ut ad hanc manum militarem recurratur, remediis opportunis deficientibus.

De causa materiali represaliarum.

[Cap. cxxv.]

Restat examinare causam materiale. De materiali ergo causa est videndum, de materia in qua, de materia circa quam, de materia contra quam, quæ est obiectum, et de materia ex qua.

Quid sit materia in qua?

Materia in qua est persona vel suppositum, cui hæc facultas conceditur.

Quid sit materia circa quam?

Materia circa quam sunt res circa quas facultas hæc conceditur.

Quid sit materia contra quam?

Materia contra quam, sive obiectum, est suppositum contra quod conceditur, ut puta civitas, vel alia universitas.

Quid sit materia ex qua?

Materia ex qua est causa ex qua hæc facultas conceditur.

Redeundo ad examinationem, quæro quibus conceditur hæc facultas represaliandi. Solutio. Civibus conceditur, propter rationem superius tactam.

Nam cives sunt pars mystici corporis, id est, civitatis, ut l. i, ff. Quod cuius-
cunque universitatis. Hinc appellata est civitas, quasi civium unitas, ut nota-
tur in cap. *si civitas*, De sent. excom., Lib. VI. Et, ut supra deductum est,
licitum est cuilibet defendere corpus suum, ut l. *ut vim*, ff. De iustit. et iure ;
et l. i, C. Vnde vi. Et hoc procedit tam in corpore mystico quam in indi-
viduali. Hic quæstiones occurrunt.

An incolis represaliæ concedantur ?

Et primo quæritur an incolis concedi debeant. Quidam hic distinguunt,
an incolæ subeant onera, et tunc concedi debeant ; an non subeant, et tunc
concedi non debeant. Ratio secundi membri. Nam qui non sentit onus, nec
commodum sentire debet, ut l. *manifestissimi*, § *sed cum in secundam*, C. De
furtis ; regula *secundum naturam*, ff. De regul. iuris ; et regula *qui sentit*, Lib.
VI. Probatur per l. *qui sub prætextu*, C. [De episc. et clericis] De collegiatis
lib. xi ; et [l. i, C.] ff. De collegiis [lib. xii], *collegia si quæ fuerint illicita*. Probatur.
Nam non habet quis privilegia dignitatis, nisi re ipsa ipsam gesserit, C. De
consulibus, l. *nemini*, lib. xii ; [C.] ff. De excusat. [tut.], l. *sed et milites*,
§ [quoniam] *quæsitum* ; ff. De testam. mil., l. pænultima. Hanc opinionem
non puto veram indistincte, immo puto distinguendum sic. Aut incola non
subit onera propter eius contumaciam, quia requisitus non vult subire, ut
tenetur. Nam inter civitatem recipientem quem ad incolatum et incolam, tacite
oritur quidam contractus ultro citroque obligatorius, quo incola tenetur
subire onera, ff. Ad municip., l. i, et l. *incola* ; et civitas tenetur ad eius pro-
tectionem, ut l. *illicitas*, § *ne potentiores*, ff. De offic. præsidis. Et hoc casu,
si denegat adimplere contractum ex parte sua, nec civitas tenetur ipsum
defendere, nec ille hoc petere potest, ut l. *Iulianus*, § *offerri*, ff. De act. empti.
Aut incola non subit onera, quia super hoc privilegiatus est a civitate, quæ
hoc onus remittere potuit, ut l. *si quis in conscribendo*, C. De pactis ; et De
episcop. et cleric., *vel a Principe*. Et tunc incolæ concedi debent, nam privilegia
concessa in eorum favorem redundare non debent in eorum læsionem, C. De
legibus, l. *quod favore* ; regula *quod ob gratiam*, Lib. VI. Et hæc intelligas de
privilegiato post assumptionem.

[Cap. cxxvi.]

*An civibus non subiectis iurisdictioni civitatis, et alias non facientibus
factiones, sint indicendæ represaliæ ?*

Secundo quæritur, an civibus non subiectis iurisdictioni civitatis, et alias
non facientibus factiones, sint indicendæ repræsalie. Quidam distinguunt,
an non sint subeantes subiecti ex privilegio, ut clerici, ut l. ii et Authent.,
statuimus, C. De episcop. et cleric. ; an propter dignitatem sæcularem, ut l. ii,
C. Vbi senat. vel clarissimi ; ff. De vacat. mun., per totum ; et talibus sunt
concedendæ, an non subeant propter contumaciam, et tunc non. Ratio primi,
ne redundet in eius læsionem quod in favorem inductum est, et quia in civibus
ex nativitate perficitur obligatio inter ipsum et civitatem, quæ non potest

mutari, ff. Ad municip., l. *assumptio*. Secus in incola, quia in incola non perficitur nisi per receptionem, ut l. i, ff. Ad municipalem. Ratio secundi est propter contumaciam suam, ut ff. Ex quibus cau. maior., l. *sed etsi per prætorem*, § *sed si dum*.

An civi per conventionem concedantur represaliæ contra civitatem originis?

[Cap. cxxvii.]

Tertio quæritur, an civi per conventionem concedantur represaliæ contra civitatem originis? Apparet quod non, nam ubi ex aliquo facto ius mihi quæritur, si illud fiat meum, non obligor, ut l. *sed et si quis*, § *et regulariter*, ff. De usufruct. legato. Sed si fiat iniuria huic civi civitati originis, quæritur ius indicendi represalias, ergo contra eam non competit. Confirmatur. Quia civitas originis præfertur, ut l. *assumptio*, ff. Ad municipalem. Confirmatur. Nam civitas originis poterat in subditum suum statuere, antequam efficeretur civis alterius per conventionem, nec civitas per conventionem potest conqueri. Confirmatur a simili usufructuarii, qui nuntiare potest novum opus omnibus præterquam domino, ut l. i, in fine, ff. De oper. nov. nuntiatione. Confirmatur a simili. Nam, habens Publicianam illam, intentat contra omnes præterquam contra dominum, ff. De Publiciana, l. ult. Probat textus in l. *de iure*, ff. Ad municipalem. Nam de his quæ aguntur inter civem et civitatem solum coram iudice illius civitatis agi debet. Confirmatur. Nam remedium extraordinarium est, ut supra probatum est, extraordinaria autem remedia non dantur filio contra patrem, C. Qui et advers. quos, l. finali. Sed maior est potestas civitatis in civem quam patris in filium, ff. De iustit. et iure, l. ii; et ff. De captivis, l. *postliminium*, § *filius*; ff. De castrensi peculio.

In contrarium probatur. Nam si duo habent eundem subditum, uterque potest defendere adversus iniuriam quæ ab alio infertur. Nam civitas punit patrem offendentem filium, ff. De patri. ^o, per totum. Confirmatur. Nam si duo habent ius in re, licet unum ius sit debilius alio, tamen habens ius debilius agit contra habentem ius potentius, si damnificat rem in qua concurrunt illa duo iura, ff. Ad leg. Aquil., l. *item Mela*, § fin., et l. *si dominus servum*, eodem titulo. Confirmatur. Nam si duo sunt domini eiusdem servi, si unus in eum delinquat, potest per alium coerceri, ff. Ad leg. Aquil., l. i. Confirmatur. Nam pro iniuria repellenda licet convocare amicos, ff. De vi et vi armat., l. iii, § *eum igitur*; et De homicid., *significasti*; De sent. excom., *dilecto*, Lib. VI. Solutio. Quidam dicunt indistincte quod possint indici, et ratio est quia facultas indicendi represalias succedit in locum deficientis iurisdictionis. Sed si civitas civem offendit, licitum est superiorem adire, ut l. *metum*, § *animadvertendum*, ff. Quod met. causa. Ergo deficiente iurisdictione locus est represaliis. Probatur per l. *sed si ex dolo*, ff. De dolo. Confirmatur. Nam quælibet potestas censetur legitima potestas, cum quis bene utitur, non autem cum spoliatur, ut l. *ei qui fundum*, § *si tutor*, ff. Pro emptore; ff. De furt., l. *interdum*, § *qui tutelam*, et sic dicunt procedere hinc inde allegata. Ego non puto hanc conclusionem sic indistincte veram, sed puto distinguendum an

iniuria irrogata a civitate originis insurgat ex facto præcedenti conventionem, per quam effectus est civis alterius civitatis, an insurgat ex post cominso. Primo casu, non possunt concedi represaliæ per civitatem conventionis. Nam oportet quod sit pars corporis defendendi, tempore quo iniustitiam patitur. Nam ad novam civitatem non transit hoc ius, ff. De servo corrupto, l. *doli*, § fin. ; ff. Depositi, l. i, § *si servus* ; et l. *quæcunque*, ff. De oblig. et actionibus. Per quæ infertur quod facto civi per conventionem post iniustitiam factam non debent concedi represaliæ. Secundo casu procedit prædicta solutio.

[Cap. cxxviii.] *An civibus et habitis pro civibus, licet limitate, represaliæ concedantur ?*

Quarto quæritur, quid de civibus et habitis pro civibus, limitate tamen ? Ecce potestas civitatis quoad quid est civis, ut l. *cives*, C. De incolis. Stipendiarii etiam, ubi merentur stipendium conveniuntur, ut l. *municipes*, § fin., ff. Ad municipalem. Scholares etiam quoad quid, ut protegantur a rectoribus civitatum, ut in i, De pecunia constituta ff. ; et Authent., *habita*, C. Ne fil. pro patre. Numquid talibus represaliæ sunt concedendæ ? Quidam dicunt quod pro his, et in his in quibus habentur pro civibus, limitatæ sunt concedendæ represaliæ, ut si scholari fiat iniuria in spectantibus ad studium, et militi in spectantibus ad militiam, in aliis non, cum in aliis non reputetur de corpore.

[Cap. cxxix.] *An civibus unius civitatis, qui pacto vel statuto tractantur ut cives alterius civitatis, per eandem concedi possint represaliæ ?*

Quinto quæritur, an, si ex pacto vel statuto cives unius civitatis tractari debeant ut cives alterius, ipsis concedi debeant represaliæ per civitatem in qua tractari debent ? Solutio. Ponderanda sunt verba pacti et statuti, nam per illa verba tractentur ut cives, non efficiuntur cives, ut l. . . .^(sic) *appellatione*, ff. De verb. significat. ; et ibi notandum, et ibi per Iacobum de Arena. Illa igitur verba intelliguntur ut tractantur in his quæ de iure communi fieri debent, ut l. *ei qui fundum*, § *si tutor*, ff. Pro emptore. Ita solvunt quidam. Hanc conclusionem non credo veram, immo credo ipsis indici debere. Nam fateor quod per illa verba non est effectus civis, sed ei debentur quæ debentur civi. Nam hoc probant verba a quibus recedi non debet, nec eorum proprio significato, ff. Qui et a quibus, l. *prospexit* ; ff. De leg., iii, l. *non aliter* ; et l. i, § *is qui navem*, ff. De exercitoria. Sibi ergo concedantur quæ civi conceduntur, at illi conceduntur represaliæ ut supra deductum est. Ergo. Nec obstat quod dicitur quod sibi concedi debent quæ de iure communi competunt, nam hoc remedium, servata debita forma, non est a iure communi inhibutum.

[Cap. cxxx.]

De materia circa quam.

Restat videre de materia circa quam conceduntur, hoc est de rebus, et hoc est clarum. Nam in rebus mobilibus et immobilibus illorum contra quos conceduntur, quæ repertæ fuerint in territorio civitatis concedentis. Sed circa hoc quæri potest de pluribus.

An contra res eorum qui capi non possunt vigore represaliarum indici possint represaliæ ?

Et primo, an contra res eorum qui capi non possunt vigore represaliarum indici possint represaliæ ? Solutio. Si sint personæ quæ capi non possunt, propter inhabilitatem insurgentem ratione ætatis, vel furoris, vel consilium, tunc in eorum res exerceri poterunt represaliæ, ff. De in ius vocando, l. *satisque* ; in Authent., Vt nulli iudicum, § *necessarium*. Si autem in personas exerceri non possunt, propter quandam prærogativam eis a iure concessam, ut sunt scholares et ambasciatores, tunc nec etiam contra res eorum quas deferunt, necessarias pro studio vel ambasciata, non poterunt exerceri, in aliis autem sic, ut ff. De publican., l. *si publicanus*. Per hoc infertur solutio alterius quæstionis tritæ, ambasciator vel scholaris defert secum res aliorum, numquid in eas exerceri poterunt represaliæ ? Dic quod non, si sint eis necessariae, ut equi et similia, ut l. *censoria*, ff. De verb. significatione ; aliter sic.

An represaliæ simpliciter indictæ exerceri possint contra bona existentia in territorio civitatis contra quam sunt indictæ, ut capiantur et reducantur in territorium civitatis indicentis ? [Cap. cxxxii.]

Secundo quæritur, an represaliæ simpliciter indictæ exerceri possint contra bona existentia in territorio civitatis contra quam sunt indictæ, ut capiantur et reducantur in territorium civitatis indicentis ? Quidam dicunt quod non, quia "extra territorium," etc., ut l. *extra territorium*, ff. De iurisdictione [omn. iud.] ; et l. *cum unus*, § *is cuius*, ff. De rebus auctor. iudic. possidend. ; et cap. ii, De constit., Lib. VI. Præterea ingredi territorium alienum conceditur causa maioris tumultus. Ergo in dubio non videtur concessum, ut l. *non est singulis*, ff. De reg. iuris. Hanc conclusionem non credo veram, nam propter defectum iurisdictionis recurritur ad manum regiam, deficiente formula ius sollemniter dicendi, et sic ubique hoc fieri potest, quia ubique licitum est cuilibet defendere corpus suum, ut l. *ut vim*, ff. De iustit. et iure ; et l. i, C. Vnde vi. Etiam in simplici et generali concessione verba debent operari generaliter, ut proferuntur, ff. De leg. præstan., l. i, § *generaliter* ; etiam contingeret represalias nihil operari, ut si contra civitatem distantem, cuius cives nihil haberent, nec cives accederent in civitate indicente. Sic ergo intelligantur, ut in omnem eventum aliquid operari possint, ff. De legat., primo, l. *si quando* ; ff. De reb. dub., l. *quotiens* ; De reg. iur., l. *quotiens*.

An, si una civitas inducat represalias contra aliam, potest Rector civitatis indicentis, scribendo Rectori civitatis contra quam, exercere represalias in res ibi situatas ? [Cap. cxxxiii.]

Tertio quæritur, an, si una civitas indicat represalias contra aliam, possit Rector civitatis indicentis, scribendo Rectori civitatis contra quam, exercere represalias in res ibi situatas ? Dicunt quidam quod, licet in executione

sententiæ hoc contingat, ut l. *a divo Pio*, ff. De re iudicata, § i ; et l. *cum unus*, § i, De rebus auct. iudic. poss. ; tamen hoc casu non. Et est ratio. Nam indictio represaliarum est quoddam particulare bellum, ad quod non potest quis compellere alium nisi subditum, ut in Vsibus Feudorum. Hic finitur lex Conradi, cap. *domino*. Sic dicere non credo. Nam supponit quod in executione sententiæ possit iudex lator sententiæ compellere iudicem bonorum, etiam non subditum, ad exsequendum, quod est falsum, quia par in parem non habet imperium, ff. De arbi., l. *nam magistratus* ; ff. Ad S. C. Trebellianum, l. *ille a quo*, § *tempestivum* ; De elect., cap. *innotuit*. Male tamen facit qui non exsequitur, adeo quod propter hoc convenietur coram superiore suo, nam donec, servata iuris dispositione, iustitia suum consequi potest effectum, non debent offendi iuris regulæ. In neutro igitur casu vindicat sibi locum compulsio, sed utroque casu honeste faciet exsequendo, quia sicut non deficiente iurisdictione requisitus debet exsequi, sic, deficiente iurisdictione, cum recurritur ad represalias, iuvare debet, licet compelli non possit. In civitatibus autem fœderatis, de quibus in l. *non dubito*, ff. De captivis, hoc fatentur de plano.

[Cap. cxxxiii.]

De materia contra quam.

Restat videre de materia contra quam, quod proprie appellatur subiectum, circa quod plura quærentur.

An represaliæ, indictæ per unam civitatem contra homines alterius civitatis, exerceri possint contra incolas illius civitatis ?

Et primo quæritur, an, si civitas Mediolanensis indixit represalias contra homines Bononienses, vel de Bononia, represaliæ exerceri possint contra incolas civitatis Bononiæ ? Solutio. Ista verba “ Bononienses ” et “ de Bononia ” idem important, ff. De excus. tut., l. *sed reprobari*, § *amplius*, et ibi glossa. Sed ista verba “ homines Bononienses ” respiciunt municipes, ut l. i, ff. Ad municipalem ; et verbum “ municeps ” est genus ad cives et incolas, ut notat C. De incolis, l. *cives*. Probat textus ff. Ad municipalem, l. *fili*, § *municeps*. Ergo, inferendo de primo ad ultimum, sequitur quod, ex natura verborum, contra incolas exerceri possint represaliæ. Et hæc vera, quando incolæ subeunt onera, ut l. i, Ad municipalem. Secus, si non subeunt.

[Cap. cxxxiv.]

An, eodem themate retento, puta si una civitas indixerit represalias contra homines alterius civitatis, exerceri possint contra eosdem, alibi morantes ?

Secundo quæritur, retento eodem themate, ut puta si civitas Mediolanensis indixerit represalias contra homines de Bononia sive Bononienses, an exerceri possint contra Bononienses alibi morantes. Quidam dicunt quod sic, quia

origo non mutatur, ut l. *assumptio*, ff. Ad municipalem. Alii distinguunt, an indicantur contra homines de provincia, et tunc non exercentur contra alibi morantes, quia non censentur de provincia, ut l. *provinciales*, ff. De verbor. signific. ; aut contra homines de una civitate, et tunc procedit prima opinio. Tertii distinguunt an alibi morentur, tamen intra eandem provinciam, et tunc contra illos exerceri possunt, aut in alia provincia, et tunc secus, per ea quæ notat glossa in l. *in adoptionem*, C. De adoptionibus. Quarti dicunt quod, secundum propriam significationem vocabuli "alibi morantes," censentur Bononienses, sed secundum communem usum loquendi secus, et communis usus loquendi prævalet, ff. De legat., iii, l. *librorum*, § *quod tamen Cassius*; et sic contra istos non poterunt exerceri. Alii dicunt quod contra Bononienses alibi morantes, onera tamen subeuntes Bononiæ, poterunt exerceri. Si autem non subeant, secus, l. i, ff. Ad municipalem; et l. ^o *si duas*, § *sed et reprobari*, § *amplius*, ff. De excusationibus; et l. *cum scimus*, in fine, C. De agric. et censitis.

An represaliæ exerceri possint contra cives vel incolas alicuius civitatis, onera eiusdem subeuntes, qui etiam sunt cives alterius civitatis ? [Cap. cxxxv.]

Tertio quæritur, an possint exerceri represaliæ contra cives vel incolas Bononienses, onera subeuntes Bononiæ, qui etiam sunt cives Mediolani. Videtur quod possint contra eos exerceri. Nam si potest civitas indicare contra non subditum, multo fortius contra subditum. Confirmatur. Nam propriarius potest petere ut usufructuario denegetur ius utendi propter contumaciam suam, et econtra, ut l. *si propriarius*, et l. *hoc amplius*, § *si cum*, et § sequenti, ff. De damno infecto. A simili ergo hic, in duabus civitatibus in eundem civem ius prætendentibus. In contrarium tenent indistincte. Ratio. Nam hoc ius succedit in locum deficientis iurisdictionis. Sed civitas in civem suum bene potest iurisdictionem exercere, ergo non subicietur represaliis, ut l. i, § *utique*^o, ff. Si quis test. lib. esse iussus. Præterea civitas tenetur defendere civem suum, ergo represaliæ indictæ non artabunt eum, ut l. *vindicantem*, ff. De evictionibus. Præterea, si quis Mediolanensis artaretur, tunc civitas sic concedens videretur contra seipsam, contra id quod habetur, ff. De iur.isci, l. *in fraudem*, § *neque*. Hanc conclusionem non credo veram indistincte. Immo si de facto non possit artare civitas civem suum, etiam civem civitatis contra quam indicuntur represaliæ, optime contra eum exercebuntur represaliæ, nam propter defectum iurisdictionis indicuntur, ut supra pluries tactum est. Sed de iure non debet iurdictio deficere, cum de iure omnes subiciantur Principi, ff. Ad leg. Rhod. de iact., l. *deprecatio*; ix, q. iii, cap. *cuncta per mundum*, et cap. *per principalem*. Sed de facto deficit, quia de facto non recognoscunt. Sicut igitur de facto deficere potest cum non subditus iniuriatur, sic et de iure subditus de facto resistere potest, et sic recurri potest ad remedium extraordinarium. Fateor tamen quod subditum non artabunt, donec specialiter contra subditum processum fuerit iuris ordine servato, nec processus sortiri possit effectum propter facti rebellionem.

[Cap. cxxxvi.]

An contra [milites] mulieres^m exerceri possint represaliæ?

Quarto quæritur, an in [milites] mulieres^m Bononienses exerceri possint? Apparet quod sic, nam in eis habet locum postliminium, ut l. i, C. De [captivis] postliminio reversis. Contrarium est verum, nam in persona capi non possunt, C. De offic. eius qui vicem alic. iud. obtinet, Authent., *sed hodie*; et C. De execut. rei iudicatæ, Authent., *sed novo iure*. Et illa facultas, concessa a iure gentium, debet intelligi civiliter, ff. De servit., l. *si cui*.

[Cap. cxxxvii.]

An contra clericos et alios, etiam clericos coniugatos, exerceri possint represaliæ?

Quinto quæritur, an contra clericos Bononienses possint exerceri? Textus est quod non, in cap. uno, De iniur., Lib. VI. Quid de clericis coniugatis? De his dicendum est, ut cap. uno, De iniur., Lib. VI.

An Episcopo, negligente facere iustitiam de clericis suis, cum haberi non potest ad superiorem recursus, quia Episcopus est schismaticus, possint indici represaliæ contra clericos eosdem per iudicem sæcularem?

Sexto quæritur, an, si Episcopus negligat facere iustitiam de clericis suis, nec haberi potest recursus ad superiorem, quia Episcopus est schismaticus, an possint contra clericos indici represaliæ per iudicem sæcularem? Quidam in hoc dubitant. Nec est dubitandum, quia laicis nulla concessa est potestas contra clericum, qualitercunque delinquentem, ut cap. *contingit*, et cap. *in audientia*, De sent. excom.; et cap. *si iudex laicus*, eod. tit., Lib. VI. Poterunt ergo coerceri per superiorem suum, et poterit haberi recursus ad iudicem sæcularem per viam invocationis, ut cap. i, De offic. iud. ord.; xxiii, q. v, *regum*, et cap. *administratores*, et cap. *principes*.

[Cap. cxxxviii.]

An contra Bononienses, vel alios studentes Bononiæ, euntes Paduam pro studio, exerceri possint represaliæ?

Septimo quæritur, an contra Bononienses euntes Paduam pro studio possint exerceri, vel etiam studentes Bononiæ? Textus est quod non, in Authent., *habita*, C. Ne fil. pro patre; et hoc vindicat sibi locum, si studeant iura in locis privilegiatis, privilegio studii, secus autem si in aliis studeant iura, ut in procemio, ff.^m, § *hæc autem tria*. In aliis autem facultatibus ubique doceri potest, ut l. *si duas*, § *cum autem*^m, ff. De excusationibus. Et quod dictum est de scholaribus, idem dicas de scriptoribus, et de bedellis et accedentibus causa scholarium. Arguit l. i, ff. De milit. testam. militis; et l. una, De bon. poss.

ex testam. militis. Idem de patre et aliis agnatis qui irent ad videndum filium et agnatum in studio, ff. De iudiciis, l. ii, § *item*, in glossa super verbo "venerit."

An contra ambasciatores indici possint represaliæ ?

[Cap. cxxxix.]

Octavo quæritur, an contra Bononienses ambasciatores possint exerceri ? Solutio. Non poterunt, ut l. fin., De legation. ; ff. De iudic., l. ii, § *legatis*, et nota C. De iurisd. omn. iud. et de foro competenti, cap. finali.

An contra euntes ad nundinas, ad Sanctum Iacobum, vel alias ad alium locum indulgentiæ. Item an contra navigantes, et an contra illos qui in ius vocari non possunt, et multis aliis casibus, exerceri possint represaliæ ?

[Cap. cxl.]

Nono quæritur, an contra Bononienses euntes ad nundinas possint exerceri ? Textus est in l. una, C. De nundinis, quod non. An contra Bononienses euntes ad Sanctum Iacobum, vel aliam peregrinationem, possint exerceri ? Respondeo, non, ut De cleri. pereгри., per totum ; et cap. *si quis Romipetas*, xxiv, q. iii ; C. Communia de success., Authent., *omnes* ; ibi libere. Idem de euntibus ad locum indulgentiæ, propter tenendum hospitium, vel aliquid simile, in servitium accedentium pro indulgentia. An contra Bononiam navigantes, qui vi ventorum deferuntur ad civitatem indicentem, exerceri poterunt ? Respondeo, non, per Authent., *navigia*, C. De furtis. Ad idem, C. De naufragiis, l. i, [lib. xi]. An etiam contra illos qui in ius vocari non possunt poterunt exerceri, qui enumerantur in l. ii, ff. De in ius vocando ? Respondeo, non. Ratio. Nam si forent condemnati, non possent capi, multo minus pro delicto vel debito alterius, hoc fieri poterit. Ex quo infertur quod, si Bononiensis eligeretur in potestatem Mediolani, ibi non posset detineri vigore represaliarum. Idem si Bononiensis iret ad civitatem Mediolani propter funus consanguinei. Idem in similibus casibus, qui enumerantur in dicta leg. ii, ff. De in ius vocando.

An contra Bononiensem potestatem, Mediolani ibi iniustitiam facientem, possint concedi represaliæ ?

[Cap. cxli.]

Decimo quæritur, an contra Bononiensem potestatem, Mediolani ibi iniustitiam facientem, possint concedi represaliæ ? Iacobus de Belvisio, in Authent., Vt non fiant pignor., tenet quod sic, per l. i, ff. Quod quisque iuris. Alii distinguunt, an fecerit talem iniustitiam pro qua conveniri non possit officio durante, vel sit talis qui conveniri non possit, ut l. *pars literarum*, ff. De iudic. ; et l. *nec magistratus*, ff. De iniuriis ; et tunc non possunt indici. Finito autem officio, poterunt indici, prius requisito syndicatore, nec debet requiri iudex civitatis suæ, quia ibi non debet con-

veniri ratione talis commissi, C. Vbi de ratiociniis agi oportet, ll. i et ii; et C. Vt omnes tam civil. quam militares, l. i; et in Authent., Vt iudi. sine quoque suff., § *necessitatem*. Si autem tales sint qui conveniri possunt, tunc poterunt indici. Hanc solutionem non puto veram in hoc secundo membro, nam represaliæ indicuntur in defectum iurisdictionis deficientis. Si ergo durante officio conveniri possunt, et in loco commissi, ut in l. ii, C. Vbi de ratiociniis; et Vt omnes tam civil. quam militares, l. i; ad quid est opus represaliis? Nec puto veram in primo membro, ubi dicitur quod finito officio possunt indici, nam finito officio possunt conveniri, et iuris forma servari. Ergo non est opus hoc remedio. Fateor tamen quod utroque casu, ubi per viam iuris non posset arceri, recurrendum esset ad represalias, et hoc casu non est requirendus iudex civitatis propriæ, quia super hoc non potest ius facere per iura superius allegata.

[Cap. cxlii.]

An contra officiales potestatis, vel rectoris, iniustitiam facientis, indici possint represaliæ?

Vndecimo quæritur, an contra officiales potestatis, vel rectoris, iniustitiam facientis, possint indici represaliæ? Iacobus de Belvisio tenet quod sic. Alii dicunt hoc verum, ubi officiales expresse iuraverunt ⁷⁹ rectorem ad faciendam iniustitiam, ut C. De advoc. diver. iud., l. *per hanc*; C. De excus. milit., l. pæn., lib. x⁸⁰. Si autem officiales expresse contradixerunt, non possunt contra tales indici, l. *quoniam*, C. De appellationibus. Si autem officiales nec consentiunt nec contradicunt, quia absentes vel ignorantes, tunc etiam non possunt, ut l. i, in princ., ff. De magistr. conveniendis. Si autem sint præsentis, nec consentiant nec contradicant, tunc si sint officiales deputati ad merum officium, qui non vocantur ad consilia, ut sunt notarii et socii et tabernarii, tunc etiam contra tales non poterunt indici, ff. De magistr. conveniendis, l. i. Et ratio. Quia non possunt resistere, ut C. Vt omnes tam civil. quam militares, l. i, § *officium*. Si autem sint officiales assumpti ad consulendum, contra illos poterunt indici.

[Cap. cxliii.]

An contra Consules, Priores, civitatis, iustitiam facere denegantes, indici possint represaliæ?

Duodecimo quæritur, an contra Priores, Consules, civitatis, denegantes facere iustitiam, possint indici? Iacobus de Belvisio dicit quod sic. Alii dicunt hoc verum contra præsentis, secus tamen contra absentes, quia contra eos, ut Consules, indici non poterunt, ut l. i, in princip., ff. De magistr. conveniendis.

[Cap. cxliv.]

An contra singulares personas, penitus innocentes, propter delictum domini, vel alterius privati, de quo iustitia non fit, indici possint represaliæ?

Tertiodecimo quæritur, an contra singulares personas possint indici, quæ sint penitus innocentes, propter delictum domini, vel alterius privati, de quo

non fit iustitia ? Iacobus de Belvisio dicit quod non, quia non debet quis gravari pro delicto alterius, Regula *non debet*, De reg. iuris., Lib. VI. Alii contra, per cap. *dominus*, xxiii, q. ii. Nam sententia interdicti puniuntur singuli, etiam innocentes, ut cap. *si sententia*, De sent. excom., Lib. VI. Etiam in bello iusto capiuntur innocentes, sed represaliæ sunt quoddam bellum particulare, etiam licet captus sit innocens, tamen civitas habet ius in eum, et hoc videtur servari.

*An contra homines subditos, quoad quid, uni civitati, non autem plene, possint
indici represaliæ ?* [Cap. cxlv.]

Quartodecimo quæritur, an contra homines subditos, quoad quid, civitati Bononiæ, non autem plene, indici possint represaliæ ? Solutio. Si sint civitates vel universitates simpliciter suppositæ civitati Bononiæ, sed ex pacto habent aliquas exceptiones vel iurisdictiones, contra istas indici non poterunt, quia non sunt subditæ quæ sunt liberæ, sed quoad quædam se subiecerunt. Et contra istas, propter delictum domini habentis eas subiectas, non indicentur represaliæ, quia sunt liberæ, ut l. *non dubito*, ff. De captivis ; sed propter delictum dictarum civitatum, indici poterunt represaliæ, sicut et bellum licitum fieri poterit.

*An contra certum genus hominum, facere iustitiam denegantium, indici
possint represaliæ ?* [Cap. cxlvi.]

Quintodecimo quæritur, an contra certum genus hominum, iustitiam facere denegantium, represaliæ possint indici ? et dicendum quod sic, servata forma.

De materia ex qua. [Cap. cxlvii.]

Restat videre de causa materiali ex qua insurgunt represaliæ. Et est defectus iurisdictionis. Nam primo debet requiri iudex, qui si negligat, nec haberi potest recursus ad superiorem, tunc concedi possunt. Sed circa hoc quæri potest de pluribus.

An requiri debeat iudex ut iustitiam faciat, antequam represaliæ concedantur ? [Cap. cxlviii.]

Et primo quæritur, quis debeat requirere iudicem ut iustitiam faciat ? Solutio. Pars iniuriam passa, et iudice negligente, debet adire Rectorem civitatis propriæ, et facere fidem de requisitione et neglectu, et petere ut iterato requiratur ut iustitiam faciat, et tunc, eo negligente, poterunt indici. Quod autem requiratur partis requisitio probatur in Authent., Vt differ. iudices, in princip., coll. iii.

[Cap. cxlix.] *An iudex iniuriam passi, qui non audet litigare in civitate iniuriam inferentis, possit scribere, ut in alios iurisdictionem proroget, vel arbitros eligat?*

Secundo quæritur, an, si pars dubitaret litigare in civitate iniuriam inferentis, propter eius potentiam, an iudex suus possit scribere ut in alios proroget iurisdictionem, vel eligat arbitros iure civili pro certis personis, utpote miserabilibus? Hoc clarum quod sic, ut l. i, in fine, C. Quando Imperator inter pup. vel viduas. Iure canonico hodie latius permissum est per cap. *statutum*, § *cum vero*, De rescriptis, Lib. VI, quoad articulum impetrationis.

[Cap. cl.]

Quis iudex requiri debeat ut iustitiam faciat?

Tertio quæritur, quis iudex requiri debeat ut iustitiam faciat? Solutio. Primo debet requiri iudex civitatis iniurantis, et tunc, si negligit iustitiam facere, adibit proximum superiorem, quo deficiente, adibit Principem, in Authent., Vt differ. iudic., in principio. Quibus omnibus deficientibus indicentur represaliæ per civitatem propriam, quæ succedit in locum deficientis iurisdictionis. Si autem non negligit, sed iniustitiam facit, pronuntiando inique, tunc si civitas habeat iudicem appellationis deputatum ad ipsum, per appellationem adibitur, et si non habeat, indicentur represaliæ. Nam est quid imputari civitati quæ non deputavit iudicem appellationis. Sin autem duo iudices appellationum iniustitiam fecerint, tunc videtur pars destituta omni subsidio, cum non liceat tertio appellari, nec videntur posse indici represaliæ, cum non defecerit iurdictio. Sed dici potest quod, si ob gratiam partis inique pronuntiaverunt, tunc peti poterit restitutio, ut l. *præfecti prætorio*, ff. De minoribus. Si autem ob gratiam illorum qui regunt, tunc parti tenerentur ad interesse, ut C. Ne liceat potent., l. i; et De his qui potent., l. i; et sic ad interesse tenentur actione in factum, ff. Pro socio, l. *nec quidquam*. Si autem inique lata sit ex solo iudicis motu, tunc est destituta omni subsidio, ut supra deductum est.

[Cap. cli.]

Qualis iniustitia requiratur, ut represaliæ concedantur?

Quarto quæritur, qualis iniustitia requiritur ut represaliæ indicantur? Solutio. Pro modico non indicuntur, cum hoc sit remedium extraordinarium, quod non datur pro modico, ut l. *scio*, ff. De in integr. restit.; et l. *si oleum*, ff. De dolo. Requiritur etiam quod totaliter sit ius læsum. Secus, si partialiter, ut l. *quotiens*, C. De preci. Imperat. offerendis. Nam totaliter iustitiam non facit, C. De servis fugit., l. *mancipia*; et l. iv, § *in eum*, ff. De damn. infecto.

[Cap. clii.]

Quando dicatur non posse haberi copia superioris, ut sit locus represaliis?

Quinto quæritur, quando dicatur non posse haberi copia superioris, ut sit locus indictioni represaliarum? Solutio. Vbi non potest haberi de iure, nec de facto, tunc est opus represaliis, ut cap. *dominus*, xxiii, q. ii; et l. *nullus*,

C. De Iudæis. Si autem de iure haberi potest, non tamen de facto, quia non obediunt, tunc idem. Si autem haberi potest de facto, non de iure, ut quia tyrannus occupavit, tunc dic ut notat Innocentius in cap. *nihil*, De electione. Si autem haberi potest de iure, sed difficile est haberi de facto, utpote Imperator cum sit valde distans, et pars est pauperrima, tunc etiam locus est represaliis, ff. De pig. act., l. *si servos*; ff. De divers. [et] temp. præscriptionibus.

De causa formali.

[Cap. cliii.]

Restat videre de causa formali, et hæc est duplex, nam est forma indicendarum, et est forma exercendarum. Forma autem indicendarum implicat formam defensionis illius contra quem indicuntur, et circa hoc etiam de pluribus quæritur.

Quo iure represaliæ concedantur ?

Et primo quæritur, quo iure concedantur. Hic dicunt aliqui quod concedantur per illos qui non recognoscunt superiorem. Ab illis hoc peti non debet iure actionis, nec per officium, sed debet requiri manus regia, per quam omnia expediebantur, ut l. ii, ff. De orig. iuris. Solum enim illud requiritur quod ius gentium requirebat, scilicet, quod causa propter quam conceduntur sit vera, salvis tamen defensionibus illi contra quem, cum hoc sit iuris naturalis, ut in Clem., *pastoralis*, § *ceterum*, De re iudicata; et habenti represalias sufficit ostendere concessionem sine alio processu. Et recte præsumuntur cetera agitata, nam instar est sacrilegii disputare de iudicio Principis, ut l. *disputare* [sacrilegii], C. De crimine sacrilegii. Et hæc vera in territorio concedentis, verum quia gens contra quam conceduntur uti posset eodem iure, per titulum Quod quisque iuris. Et finaliter ex pacto de hoc deberet^o cognoscere, ut puta arbitri, vel alii. Incumberet onus probandi illi cui sunt concessæ servata fore ea quæ iure gentium requiruntur. Ideo tutius est quod fiat processus, et in scriptis redigatur. Et hoc tenet Archidiaconus in cap. unico, De iniuriis, Lib. VI. Nam tenet quod præcedere debet monitio et sententia super neglectu, et ita sentit Guido, Concordensis episcopus. Si autem represaliæ petuntur ab illis quibus hoc concessum est a statutis, tunc si statutum tradit ordinem, ille debet servari. Si autem nullum tradit ordinem, tunc, quia facultas concedendi represalias procedit a iure civili, cum statuta sint ius civile, ut l. *omnes populi*, ff. De iustit. et iure; tunc debet implorari officium officialis, libellus porrigi, pars citari, et procedi ut disponunt iura.

Quis comparere possit ad impediendum ne represaliæ indicantur ?

[Cap. cliiv.]

Secundo quæritur, quis comparere possit ad impediendum ne indicantur ? Solutio. Quilibet cuius interest, De testib., cap. *veniens*; De re iudi., cap. *cum super*. Interest autem populi contra quem indicuntur, sic ut, habens manda-

tum, admittetur, et quilibet de populo sine mandato admittetur, quia cuiuslibet interest, ff. De novi oper. nunt., l. *in provinciali*, § fin. Admittentur etiam illi qui sunt de populo indicentis, quia interest ne iniuste indicantur, ne eodem iure utantur contra eos, ff. Quod quisque iuris, in rubro, et per totum nigrum.

[Cap. clvi.]

Quæ defensæ competunt illi contra quem indicuntur ?

Tertio quæritur, quæ defensæ competunt illi contra quem petuntur ? Solutio. Competit exceptio, quod petens non habet ius petendi, vel ratione personæ, vel iuris incompetentis, vel quod paratus est emendare, ut cap. *Dominus Noster*, xxiii, q. ii. An possit pacto renunciari huic iuri ? Ecce eligitur Rector civitatis Bononiæ qui iurat non petere represalias contra civitatem, numquid obstat exceptio renuntiationis ? Solutio. Si passus est iniuriam propter iniquam condemnationem, tunc, quasi in modum appellationis, recurritur ad iudicem proprium, in locum deficientis iurisdictionis, sed sic renunciari potest appellationi, ut l. ult., C. De temp. appellationum. Si autem passus sit iniuriam, tunc pactum nullum operatur effectum, quia remitteretur dolus futurus, ut l. *si unus*, § *illud*, ff. De pactis ; et l. *convenire*, ff. De pact. dotalibus.

[Cap. clvi.]

Qualiter constabit de iniustitia facta, vel ea denegata ?

Quarto quæritur, qualiter constabit de iniustitia facta, vel ea denegata ? Solutio. Per acta primi iudicis, vel per testes, et requiri potest primus iudex, ut faciat copiam actorum, et si non faciat, hoc est iniustitiam facere, ut l. ii, C. Vt lite pendente.

[Cap. clvii.]

An, si aliqua capiantur vigore represaliarum, detineri valeant, ut ex primo decreto, an secundo ?

Quinto quæritur, an, si aliqua capiantur vigore represaliarum, detineri valeant ut ex primo decreto, an ex secundo. Solutio. Si indictæ sunt represaliæ, parte citata et comparente, et lata fuerit super hoc sententia, tunc ea detinentur ex causa iudicati, ut ff. De re iudic., l. *a divo Pio*. Si autem non compareat, tunc primo dabitur licentia, ut capiat ex primo decreto, ut affectus tædio veniat, et si contumax perseveraverit, tunc dabitur licentia detinendi ex secundo decreto.

[Cap. clviii.]

De forma exercendi represalias.

Restat videre de forma exercendi represalias indictas, et circa hoc quæritur de pluribus.

An liceat illi cui sunt concessæ represaliæ, auctoritate propria, vel per ministros concedentis, capere homines contra quos indicuntur?

Et primo quæritur, an liceat illi cui sunt concessæ represaliæ auctoritate propria, vel per ministros capere homines contra quos indicuntur? Solutio. Iacobus de Belvisio tenet quod non licet auctoritate propria capere personas nec res, sed iudiciaria, ut l. *miles*, ff. De re iudicata. Supplent quidam hoc verum, si potest haberi copia iudicis, alias auctoritate propria licebit, ff. Quæ in fraud. cred., l. *ait prætor*, § *si debitorem*; C. De decur., l. *generali*. Et hoc puto verum. Ponderari tamen debet modus facultatis concessæ, et ille servandus, De rescriptis, *cum dilecta*; et l. *diligenter*, ff. Mandati.

An personas et res captas teneatur capiens præsentare iudici, vel sibi retinere? [Cap. clx.]

Secundo quæritur, an personas captas et res teneatur capiens præsentare iudici, an possit retinere sibi? Solutio. Iacobus de Belvisio tenet quod teneatur præsentare iudici, per l. *non est singulis*, ff. De regul. iuris; ne fiant illicitæ exactiones, ut l. *illicitas*, ff. De offic. præsidis. Alii dicunt hoc procedere in personis captis, quæ debent ad iudicem duci, ut l. *generali*, C. De decur.; et coll. x^o, De pace iuramento firmata. Res autem capientur ex causa iudicati, vel ex primo vel ex secundo decreto, ut supra tactum est, et remanebunt penes capientem, ut l. *is cuius*, § *qui legatorum*, ff. Vt in poss. legatorum. Et pro hoc non est plus necesse ire ad iudicem, nam sufficit prima concessio. In his omnibus puto ponderandam formam concessionis.

An res captæ vigore represaliarum vendantur, et qualiter, vel in solutum accipiantur, vel æstimentur? [Cap. clx.]

Tertio quæritur, an et qualiter res captæ vigore represaliarum vendantur, vel in solutum accipiantur, vel æstimentur? Solutio. Dicunt quidam quod iudicis auctoritate venduntur, ut l. *miles*, § ii, ff. De re iudicata. Æstimatio fiet per iudicem, ut l. ii, C. De iure dot.; impetrandum, et in computatione fiet deductio impensarum, ff. Ad leg. Falc., l. *in quantitate*; et l. *scimus*, § *in computatione*, C. De iure deliberandi. Et in his etiam puto attendendam formam concessionis, ut supra.

An diebus feriatis indictæ represaliæ exerceri possint? [Cap. clxi.]

Quarto quæritur, an diebus feriatis indictæ represaliæ exerceri possint? Solutio. In diebus feriatis propter hominum necessitatem, exerceri possunt, sicut executiones sententiarum, ut c. ult., De iudiciis. Si autem sunt feriat ob reverentiam Dei, tunc dicunt aliqui hoc fieri posse in casu, ne contingat depe-

rire totam concessionem, ut puta si illi contra quos conceduntur sint ⁽ⁿ⁾, et non veniant nisi diebus feriatis. Allegant l. i et l. ii, ff. De fer.; et l. ii, C. eod. titulo. Alias non, per l. *dies*, C. De feriis. Hanc conclusionem non credo veram in hoc secundo membro. Nam capta occasione represaliarum capiuntur aut ex primo, aut ex secundo, decreto, aut causa iudicati, ut supra deductum est. Et hæc omnia inhihentur tempore sic feriato, ut l. *dies*, statim allegata. Etiam lex ponit specialiter, in feriis inductis propter hominum necessitatem, ut in casibus illis procedi possit illis diebus, ut ll. i et ii, ff. De feriis. In feriis autem inductis propter reverentiam Dei, nihil excipitur, ergo standum regulæ.

[Cap. clxii.]

Si quis se, vel res captas, vigore represaliarum velit defendere, qualis cognitio adhibeatur?

Quinto quæritur, si quis vult se defendere, vel res captas, vigore represaliarum, qualis cognitio adhibeatur? Solutio. Dicunt quidam quod, si facta est plena executio, ut quia res venditæ vel in solutum datæ, tunc est opus ordinaria cognitione, nec audietur officium implorans, ut l. *a divo Pio*, § *si post addictum*, ff. De re iudicata. Si autem non sit executio plene facta, sed pendet, tunc potest officium iudicis implorare, per quod fiet editio actorum, vigore quorum indictæ sunt represaliæ, et poterit opponere defectum iuris illius cui sunt concessæ, et inhabilitatem personæ, et alia, de quibus supra tactum est. Allegant l. ii, C. De edendo; et l. ii, C. Vt lite pendente; et l. i, ff. De edendo. Et fiet super hoc summaria cognitio. Hanc conclusionem non credo veram in hoc secundo membro. Nam si sint indictæ represaliæ, parte citata, et comparente, et in iudicio persistente, tunc clarum quod dicta conclusio non procedit, quia illæ exceptiones veniebant proponendæ a principio, nec opponi possunt post sententiam, ut l. *peremptorias*, C. Sent. rescindi non posse; et l. *si quidem*, C. De except.; et cap. *pastoralis*, eod. tit., Extra. Si autem indictæ sunt, parte per contumaciam absente, ex primo vel secundo decreto, ut lapsus anni in reali, tunc idem, quia non audietur nisi per viam ordinariam, ut l. *si finita*, § *si plures*, ff. De damn. infecto; et l. *consentaneum*, C. Quomodo et quando iudex, et ibi nota; et cap. *contingit*, De dolo et contumacia. In primo autem decreto procedere posset.

[Cap. clxiii.]

De remediis exacti.

Huic membro adiungitur de remediis exacti. Et circa hoc de pluribus quæritur.

An exacto competat regressus contra illum propter cuius debitum vel delictum exactus est?

Et primo quæritur, an exacto competat regressus contra illum propter cuius delictum vel debitum? Iacobus de Arena tenet in l. ii, ff. De verb. oblig., quod ei succurritur contra illum propter cuius indictæ sunt represaliæ,

per l. *nam et Servius*, De neg. gest. ; ff. Nautæ caup. stabul., l. *licet*, § fin. ; ff. De his qui deiec. vel effus., l. *si vero*, § *cum autem*. Alii dicunt contra, per glossam l. *si quis dolo*, § i, ff. De reg. iuris. Nam iste non est exactus propter illum privatum, immo propter iudicem, qui iustitiam denegavit, vel iniustitiam fecit. Dicunt ergo quod aut est exactus iudex quia fecit iniustitiam, et tunc iudici non succurritur, ut dicta l. *si quis dolo*, aut est exactus iudex, quia neglexit iustitiam, et tunc succurritur contra illum de quo requirebatur iustitia, ut C. De exact. trib., l. *missi*, in fine lib. x. Aut exactus est tertius de populo, et tunc procedit opinio Iacobi, ut l. *licet*, in fine, ff. Nautæ caup. stabul., etc.

An exacto succurratur contra Rectorem, sicut contra debitorem principalem ? [Cap. clxiv.]

Secundo subsequenter quæritur, an exacto succurratur contra Rectorem, sicut contra debitorem principalem, ut supra dictum est ? Solutio. Primo conveniendus est debitor principalis, et si non est solvendo, tunc Rector, cum ipse etiam debitor fiat, iustitiam denegando. Quod hic ordo sit servandus probatur ff. De magistr. conven., l. i, in princip. ; et C. De conven. fisci debitoribus, l. *quoniam*. Ultimo pervenitur ad officiales, qui, cum possent compellere Rectorem ad iustitiam, neglexerunt, ff. De tut. et rati. distrahendis, l. i, § *nunc tractemus*.

An captus vigore represaliarum possit auctoritate propria homines illius civitatis capere in qua fuit captus ? [Cap. clxv.]

Tertio quæritur, an captus vigore represaliarum possit auctoritate propria homines illius civitatis capere in qua captus fuit. Et videtur quod sic, per totum titulum, ff. Quod quisque iuris. Contrarium est verum, nam titulus, Quod quisque iuris, vindicat sibi locum in iuris executione, ut si una civitas indixit represalias iniuste contra aliam, hoc idem licet alii contra primam. Non autem loquitur in executione facti, ut, si spoliavi te, liceat tibi spoliare me, quia sic permetteretur vindicta. Contra id, ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*. Recurrat ergo ad civitatem suam, et petat represalias contra illam civitatem in qua captus fuit.

An per statuta represaliæ concedi possint, in casibus alias iure communi non permissis ? [Cap. clxvi.]

Quarto quæritur, an per statuta represaliæ concedi possint, in casibus alias non permissis iure communi ? Solutio. Civitas contra terras plene subditas concedere potest, etiam in casibus non permissis lege communi, sed in terras liberas, vel etiam confœderatas, de quibus loquitur, l. *non dubito*, ff. De captivis, non potest. Ratio. Nam in concessione represaliarum, vertitur in causæ cognitione de iniustitia facta, vel iustitia denegata, et in hoc una

civitas non potest statuere contra aliam, quia "par in parem," etc. Secundo vertitur, an haberi possit copia superioris denegantis iustitiam facere. Et de hoc nihil potest una civitas contra aliam statuere. Nam non posset statuere quod indicantur represaliæ, non requisito superiore denegantis iustitiam. Nam hoc esset tollere iurisdictionem superioris, De iureiurando, *venientes*. Tertio requiritur auctoritas superioris indicentis, et ipsa non recognoscens superiorem est illa cuius auctoritas requiritur, et de hoc statuere potest civitas quod ea non requisita, et quod unus pro debito alterius capiatur, C. De omni agro deserto, l. i, lib. xi; sicut statuitur in casibus quod uxor pro debito viri teneatur, C. In quibus [modis] causis pign. contrahitur, l. *satis*; et filius pro patre, ut C. De primipilo, l. fin.; lib. xii.

An statutum civitatis, quo cavetur quod filius teneatur pro patre delinquente, possit exerceri contra filium existentem extra territorium civitatis concedentis?

Quinto quæritur, an statutum civitatis, quo cavetur quod filius teneatur pro patre delinquente, possit exerceri contra filium existentem extra territorium civitatis concedentis. Solutio. Aut filius erat natus tempore delicti commissi a patre, et tunc aut quæritur, numquid fieri possit executio statuti contra filium alibi existentem. Et non potest, ut l. *a divo Pio*, § pænult., ff. De re iudicata; et l. *cum unus*, § [cum is] *is qui*, ff. De rebus auctor. iudi. possidendis. Aut quæritur, numquid conditione ex illo statuto agi possit contra eum. Et potest, quia actio ipsum sequitur cui competit, C. De longi tempor. præscriptione, l. finali. Hæc vera, nisi filius ante delictum commissum contraxisset alibi domicilium, vel inde foret ratione antiquæ originis, quia tunc illa civitas, ut præveniens, posset illum defendere ab illo statuto. Si autem filius natus sit post commissum delictum, tunc non agetur contra illum. Nam statutum intelligitur de filiis tunc habitis, ff. De noxal., l. *in delictis*, § *si extraneus*; ff. De milit. testamento, l. [si] *Titius*. Idem dico si statutum habet quod unus de villa teneatur pro delicto alterius. Effectus de novo homo illius, non tenetur pro debitis antiquis, ut C. De decur., l. *providendum*; et nota Dinum in l. *incola*, ff. Ad municipalem.

[Cap. clxvii.]

An per pactum licite fieri possit ut unus pro alio teneatur?

Sexto quæritur, an per pactum possit fieri licite ut unus teneatur pro alio? Solutio. Per pactum privatorum expressum, non; in Authent., Vt non fiant pignorationes. Etiam si paciscatur quod exigatur alius in quo habet ius, ut C. Ne filius pro patre, per totum. Et licet hoc non possit dominus, iudex tamen domini poterit facere capi homines sic conditionatos.

De Bello Particulari quod fit ad purgationem, quod " Duellum " nuncupatur. [Cap. clxviii.]

Restat nunc videre de Duello, in cuius tractatu, primo quæram quid sit Duellum? Secundo, quot sint species Duelli? Tertio, quo iure sit permis- sum, et quo inhibitum? Quarto, propter quid sit permissum, et propter quid inhibitum? Quinto, pro quibus causis licitum sit duellum? Sexto, inter quos sit licitum? Septimo, qualiter duellandum?

Quid sit duellum?

[Cap. clxix.]

Circa primum dico quod Duellum est pugna corporalis deliberata hinc inde duorum, ad purgationem, gloriam, vel odii exaggerationem. Dixi " pugna." Hoc ponitur ut genus. Dixi " deliberata hinc inde." Hoc ponitur ad differentiam pugnae quæ fit ad necessariam defensam sui, de qua in l. *ut vim*, ff. De iustit. et iure; et l. i, C. Vnde vi; et l. i, § *vim vi*, ff. De vi et vi arm.; et l. *scientiam*, § *qui cum aliter*, ff. Ad leg. Aquil.; et cap. *olim*, i, De restit. spoliat.; et Clemen., *si furiosus*, De homicidio. Nam in pugna illa non est deliberatio ex parte aggressi regulariter, sed ex parte aggredientis tantum, vel neutrius, ut probatur in dicta Clemen., *si furiosus*. In Duello autem est utriusque deliberatio. Dixi " duorum," quia tunc proprie Duellum nuncupatur, adhærendo etymologiæ vocabuli, Instit., De donat., § *est et aliud*; xvi, q. i, *si cupis*; xxi dist., *cleros*; De præbend., *cum secundum*. " Pugna duorum," ad differentiam contractuum qui inter duos celebrantur, ex mutuo partium consensu, ut Instit., De obligationibus, cum rescriptis sequentibus. Et dixi " corporalis," ad differentiam pugnae iudiciariæ, quæ fit etiam inter duos, utpote actorem et reum, ut l. *rem non novam*, § *patroni*, C. De iudic., et l. *properandum*, eod. tit.; et cap. *forus*, De verbor. significatione. Nam ibi non contenditur viribus corporis, sed iuribus, ut iuribus statim allegatis. Dixi " ad purgationem, gloriam, vel odii exaggerationem." Nam per hoc tangitur finis, et eliciuntur species Duelli, ut infra sequitur. Concluditur igitur descriptio Duelli in genere, per supra dicta.

Quot sint species Duelli?

[Cap. clxx.]

Circa secundum est advertendum quod Duellum, ut supra describitur, sumitur generaliter, et, ut tetigi in fine descriptionis, species Duelli eliciuntur per verba posita in fine, nam tres sunt species Duelli. Fit enim Duellum aut propter odii exaggerationem, aut propter gloriam in publico consequendam, ex viribus corporis, aut propter purgationem alicuius criminis iniuncti.

Qualiter duellum fit propter odii exaggerationem?

Propter igitur odii exaggerationem fit, cum aliqui solo odio originaliter naturali, et naturalitate singulari, quæ apud naturales " forma specifica " appellatur, inducuntur ad se invicem exterminandos. Et de hoc Duello non

reperio aliquid iure cautum, sed ex principiis naturalibus hoc evenit, ut statim prosequar, et quia sensuali experientia hoc est comprobatum.

Qualiter duellum fit propter gloriam in publico consequendam?

Fit et, secundo, propter gloriam in publico consequendam, ut in publicis spectaculis, cum duo vires corporeas variis modis experiuntur. Et de hoc reperio iure cautum, et civili et canonico. Lege civili, ut l. *hac actione*, § *si quis in colluctatione*, ff. Ad leg. Aquil.; et l. una, C. De glad. toll., lib. xi; [C.] ff. De re iudic., l. *commodis*; ff. De his qui not. infam., l. *athletæ*; C. De athletis, l. i; C. Quæ res pign. obl. poss., l. *spem*; ff. De donat., l. *donationes*. Nota glo. Instit., De hæredit. quæ intest. defer., § *interdum*. Lege canonica, De clericis pugnantis in duello. Licet etiam ibi fiat propter purgationem, De torneam., per totum. Licet non sit proprie Duellum, sed pancratium, ut l. *hac actione*, § *si quis in colluctatione*, ff. Ad leg. Aquiliam.

Qualiter duellum fit propter purgationem alicuius criminis iniuncti?

Fit et tertio, propter purgationem, scilicet, cum aliquod crimen alicui imponitur, et ad probationem provocans, forte carens aliis probationibus, vel etiam non carens, offert se probaturum viribus corporeis, duello suscepto, et provocatus sic se purgat. Et de hoc habetur etiam iure cautum, De cler. pugn. in duello, ut supra allegavi; De purga. vulgari, per totum; ii, q. v, quasi per totam illam quæstionem; et in Lombarda, ut ibi prosequar, cum illud membrum discutiam.

[Cap. clxxi.]

Quo iure sit permissum, et quo inhibitum, Duellum?

Circa tertium, videlicet, quo iure sit introductum duellum? Expedit singulas species duelli supra positas explicare, declarando circa singulas quo iure inducantur, et quo inhiuantur. Et primo de duello proveniente propter odii naturalis exaggerationem, ubi sciendum quod hoc duellum introductum est iure naturali, ut sumitur ius naturale pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum, ut sumitur in secundo suo significato, ut notat glossa, i dist., *ius naturale*; et l. i, § *ius autem naturale*, ff. De iustit. et iure. Et ipsum duellum est inhibitum iure naturali, ut sumitur ius naturale pro instinctu naturæ, proveniente ex rationabili intelligentia, quæ appellatur naturalis æquitas. Et est tertius modus iuris naturalis, ut dicto canone, *ius naturale*. Est etiam inhibitum iure naturali, continente præcepta moralia legis divinæ, ut sumitur quarto modo, ut canone statim allegato. Est etiam inhibitum hoc duellum iure positivo, scilicet, canonico et civili. Expedit enim singula demonstrare.

Qualiter duellum quod fit propter odii exaggerationem sit introductum iure naturali, sumpto pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum?

Dixi quod hoc duellum est introductum iure naturali, ut sumitur pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum. Hoc sic demonstratur. Quidquid est productivum causæ immediatæ alicuius effectus, per consequens est productivum illius effectus. Sed istud ius naturale, originaliter inclinans ad sic appetendum, est causa inductiva huius sensualis appetitus ad duellandum. Ergo est causa duelli inductiva. Probatur maior. Nam imprimens sufficienter in causam causæ productivæ sic remote, imprimit in effectum, ff. Ad leg. Corn. de sicar., l. *nihil*; C. eod. tit., l. *si quis necandi*; i di., *studeat*; et can. *si quis viduam*; De homicidio, *de cetero*, et cap. *presbyterum*. Probatur minor. Nam ex naturali dispositione, proveniente a principiis naturalibus, et superioribus et inferioribus, provenit in hominibus varia appetitus inclinatio. Nam circumscripto quolibet merito, vel demerito, tibi naturaliter placebit quod mihi displicet, et econtra, et ex naturali dispositione quis, circumscripto accidentali quocunque, diligit et odit. Quilibet hoc experiri potest in seipso. Sed causa huius est prompta, attentis corporibus cœlestibus. Nam, si aliqui, tempore natalium in momento natalium, habeant uniformem correspondentiam configurationis cœlestis, et principia paterna conformant in complexionibus, procul dubio sunt amicissimi naturaliter. Sic si repugnantes, hinc inde sunt inimicissimi. Nam ab uniformi causa debet insurgere uniformis effectus, C. Ad leg. Falc., l. ult.; ff. Ad leg. Aquil., l. *illud*; ff. De fonte, l. i; De constit., *translatio*; et cap. *inter corporalia*, De translat. [prælatorum] episcoporum. Et tamen est hic attendendum quod hæc inimicitia naturalis inter hominem et hominem, ut prædixi, provenit ex singulari naturali dispositione, quæ "forma specifica" apud naturales nuncupatur. Nam, attenta naturali dispositione speciei humanæ, inter homines debet esse amicitia, propter uniformitatem complexionis relatæ ad formam humanam, et propter ea dicunt iura quod inter hominem et hominem est officium humanitatis, hinc inde impendendum, ut l. *si servus*, in fine, ff. De servis expor.; et l. *officio*, C. De neg. gest., et ibi glossa. Et sic non insurgit hoc ex naturali dispositione speciei, quia hoc naturaliter non est reperire, si quis recurat per species singulas animalium. Nam inter singulas species brutorum est quoddam fœdus coniunctionis et cohabitationis; propter uniformitatem complexionis relatæ ad formam specificam. Sed inter speciem et speciem quandoque est extremum repugnantia, inductorium ad alterius exterminationem, ut est in accipitre et avibus aucupabilibus, murilega et muribus, canibus et leporibus. Et sic de singulis. Provenit igitur hoc ex quadam repugnantia individuali dispositione principiorum superiorum et inferiorum. Effectum quilibet in se experitur. Illa tamen dispositio non inducit regulariter immediate duellum, sed per medios actus ad quos propere proveniunt, sed tamen credo quod tanta posset esse repugnantia individualis

dispositionis, quod subito ad id provenirent. Et hoc provenit cum reguntur sola sensualitate, et nullo rationis vibramine. Ex his apparet conclusum qualiter hoc duellum introductum est iure naturæ, sic sumpto.

[Cap. cixxii.] *Qualiter duellum, quod fit propter odii exaggerationem, sit inhibitum iure naturali, sumpto pro rationabili intelligentia, et iure divino, canonico, et civili.*

Restat videre quod dicebam secundo circa hoc membrum. Dicebam enim, quod hoc erat inhibitum iure naturali, sumpto pro rationabili intelligentia, et sic iure gentium et iure naturali, prout continet præcepta moralia legis divinæ, et iure canonico, et civili. Hoc luce clarius demonstrari potest, incipiendo a lege divina. Nam hoc est unum de præceptis decalogi, "non occides," et sic lege divina inhibitum, et hoc est regulare præceptum. Et si detur instantia de Iephte, qui occidit filiam, nec tamen peccavit, lege divina, Iudicum [v] xi cap. ; xxii, q. iv, *unusquisque* ; xxiii, q. v, *si non licet* ; et de Samson, qui multos et se occidit, Iudicum xvi cap. ; xxiii, q. v, *si non licet* ; non obstat, quia hæc facta fuerunt Spiritus Sancti inductione, ut scribit Augustinus in libro primo De civitate Dei. Transumptive habetur in cap. *si non licet*, xxiii, q. v. Sic igitur lege divina inhibitum est per illud præceptum "non occides," Deuteronomii v capitulo. Est etiam inhibitum lege canonica, De homicid. voluntario ; l distinc.^m, quasi per totum ; xxiii, q. v, *si non licet*. Est etiam inhibitum iure civili, ff. Ad leg. Corn. de sicar. ; et C. eod., per totum. Et si dicas illa iura inhibent homicidium voluntarium, et sic hoc genus duelli, ex quo illud provenit, sed homicidium proveniens a duello, introducto ex naturali dispositione, non est voluntarium, ex quo naturaliter est introductum, ergo illa iura non astringunt hunc casum. Solutio est prompta. Nam, licet naturalis dispositio corporea hoc introducat, tamen naturalis intelligentiæ dictamen disponit in contrarium. Cui obtemperandum est, nam illa naturalis dispositio non necessitat, immo manet liberum arbitrium, xxiii, q. iv, *De Tyriis* ; et cap. *Nabuchodonosor* ; et cap. *sicut enim*, De Poenit., dist. ii ; et Philosophus, iii Ethicorum. Immo et astrologi, hoc efficacius demonstrantes, hoc idem asserunt. Vnde inquit Ptolemæus, in Centiloquio, in verbo decimo, "anima sapiens dominatur astris." Sic igitur, licet dispositio corporea proveniat a naturali principio, tamen naturalis intelligentia manet, et in contrarium disponit. Sic dici posset de singulis generibus vitiorum moralium. Nam naturaliter singuli homines ad singula inclinantur vitia, ut quidam superbi, quidam luxuriosi, quidam avari, et sic de singulis. Nec tamen excusantur, quia precise non necessitantur, ut cap. *Nabuchodonosor*, xxiii, q. iv. Hinc est quod dicit Philosophus, iii De anima, tractatu de motu, quod inter appetitum sensitivum et intellectualem est quandoque repugnantia. Nam sensitivus tendit in unum, intellectivus in alium, et, si intellectus vincat sensum, motus est rationabilis et naturalis, sicut si sphaera superior moveat inferiorem. Si autem econtra fiat, motus est contra naturam, ac

si sphæra inferior moveat superiorem, licet enim motus sensus proveniat a natura, inclinando in vitium, tamen fit contra naturam, nisi obtemperet sensus intellectui, ut subditus domino suo, ut idem Philosophus, primo Politicorum. Est etiam hoc genus duelli inhibitum iure naturali, ut sumitur pro naturali intelligentia, quod idem est quod ius gentium. Hoc probatur sic. Nam ex naturali intelligentia insurgit communis et naturalis æquitas, disponens in conservationem Vniversi, et inde habuit ortum ius positivum, immo, ut verius loquar, sunt ipsamet æquitas iuris naturalis, aliquo addito vel detracto, ut l. *ius civile*, ff. De iustit. et iure. Cum igitur hæc naturalis æquitas tendat in conservationem Vniversi, ergo reprobatur hominis exterminationem, quæ est tendens ad mundi destructionem; et dico de exterminatione tendente ad mundi destructionem. Nam quædam, quorundam hominum, exterminationes tendunt ad mundi conservationem, ut puta cum mali exterminantur. Nam propter hoc interest reipublicæ, ut puniantur, ut ff. De publ. et vecti., l. *licitatio*; ff. Ad leg. Aquil., l. *ita vulneratus*, in fine; ff. De fideiuss., l. *si a reo*; De sent. excom., ut *famæ*. Ex his aperte concluditur qualiter hoc genus duelli est inhibitum iure divino, iure gentium, canonico, et civili.

Qualiter duellum quod fit propter gloriam introductum sit iure naturali, sumpto pro instinctu naturæ ex sensualitate proveniente.

[Cap. cxxxii.]

Restat de duello quod fit propter gloriam victoriæ quod fit in publico spectaculo, quo iure introductum est, et quo inhibitum. Et dico quod hoc genus duelli est introductum iure naturali, ut sumitur in secundo suo significato, scilicet, pro instinctu naturæ proveniente ex sensualitate, sed est inhibitum iure naturali, sumpto pro iure gentium et iure divino. Est etiam inhibitum iure canonico et civili, modificative tamen, ut statim subiciam. Declaremus singula. Dixi quod erat introductum iure naturali, sumpto in secundo suo significato. Hoc probatur, ut dictum est supra proximo membro. Nam sensualis inclinatio proveniens a principiis naturalibus induxit ad experientiam virium corporalium solum ad gloriam consequendam. Ergo inducit hoc genus duelli inde proveniens, cum producens causa producat effectum, ut iuribus statim allegatis in superiori membro. Hoc tamen genus duelli est minus detestabile primo genere, attento utriusque fine. Nam primum genus duelli fit propter exterminationem finaliter, occasione inimicitiae naturalis manentis. Hoc autem non fit necessario ad exterminandum, sed vincendum, quod contingere potest sine exterminatione. Ergo hoc minus detestabile, cum actus hominum distinguantur propter fines intentos, ff. De furtis, l. *verum*, et l. *qui iniuriæ*; ff. De [fal.] furtis, l. *qui ea mente*; xv, q. vi, cap. i; xiv, q. v, *quidquid*; De sent. excom., cum *voluntate*. Hinc est, quod inquit Philosophus, iv Ethicorum, qui fornicatur cum muliere ut pecuniam inde detrahat non mœchia, sed avarus. Sic igitur, sine ponderato, hoc minus detestabile illo. Confirmatur. Primum genus insurgit ex odio, quod in se detestabile est

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si sine causa rationabili proveniat, ut in proposito. At hoc genus duelli sine odio provenit. Nam et naturales amici duellabant in spectaculo ad finem gloriæ consequendæ. Confirmatur. Illud est minus detestabile quod minus distat a naturali æquitate, sed hoc secundum genus duelli minus distat a naturali æquitate. Ergo. Probatur maior. Nam detestatio et approbatio actuum provenit a naturali æquitate, super qua fundantur inhibitiones et permissiones iuris, ut l. *ius civile*, ff. De iustit. et iure; et can. *ius naturale*, i distinctione. Probatur minor. Nam hoc duellum non distat ab æquitate iuris naturalis, nisi quia ex illo sequi posset hominis occisio, qui actus tendit in destructionem Vniversi, super qua æquitate fundatur inhibitio legis novæ civilis, ut l. una, C. De gladiat., lib. xi. Cum tamen lege veteri non esset facta inhibitio, quia sic se occidentibus remittebantur actiones, ut l. [hac] *qua actione*, §. *si quis in colluctatione*, ff. Ad leg. Aquiliam. Sed primum genus distat a naturali æquitate. Primo, quia tendit ad necessariam alterius vel utriusque exterminationem. Distat etiam in fomite odii, quod naturalis æquitas abhorret, si sine causa insurgat. Ergo detestabilius. Confirmatur. Illud est detestabilius quod in totum nocet et in nullo prodest, illo quod partim prodest et partim nocet. Sed primum genus in totum nocet, et in nullo prodest, hoc autem secundum partim prodest. Maior clara. Nam actus denominantur laudabiles et vituperabiles ratione laudabilitatis finis, et ipsius vituperabilitatis, cum finis in talibus ponderetur, ut ff. De ritu. nupt., *si quis in senatorio*; ff. De iure fisci, l. *non intelligitur*, §. *si quis palam*; ff. De iudiciis, l. *cum furiosus*. Minor probatur. Nam primum genus fit solummodo propter exterminationem mutuam, et hoc nocet, secundum autem fit in publico spectaculo propter lætitiā et recreationem populi. Et ob hoc ludi permittuntur et spectacula, C. De spectacul. et scænic. et lenon., per totum titulum, excepta l. fin., lib. xi; et C. De expen. ludor., l. una. Est Græca constitutio. Ex his infertur hoc genus duelli introductum iure naturali, sumpto in secundo suo significato, et ipsum fore minus detestabile primo genere.

[Cap. clxxiv.]

Qualiter duellum quod fit propter gloriam inhibitum sit iure divino.

Restat videndum quomodo hoc genus duelli est inhibitum. Et dicebam ipsum inhibitum iure divino, iure gentium, et iure positivo, canonico, videlicet, et civili. Quod autem iure divino sit inhibitum, probatur. Nam cum aliquid aliquo iure inhibetur, inhibetur etiam omne id per quod pervenitur ad illud. Sed iure divino inhibetur homicidium, ad quod pervenitur per hoc genus duelli. Ergo. Probatur maior per l. *oratio*, ff. De sponsal.; ff. De fideius., l. *cum lex*; C. De usuris, l. *eos*, in fine; C. De usuris rei iudic., l. ult. in fine; ff. De pet. hæred., l. *sed si lege*, §. *item veniunt*; ff. De mino., l. iii, §. *sed utrum*. Minor probatur, Deuteronomii v cap., "Non occides," quod autem per hoc genus duelli perveniatur ad homicidium, luce clarius est. Confirmatur. Ille actus a iure divino inhibetur qui est alienus a fonte caritatis,

sed hoc genus duellandi est huiusmodi. Ergo, etc. Probatur maior, nam caritas est fundamentum omnium virtutum, et exclusiva vitiorum, De Poenit., dist. ii, *caritas est*, et cap. *ergo*, et quasi per totam primam partem illius distinctionis; et sic alienum a caritate sapit naturam peccati, et sic inhibitum iure divino. Probatur minor. Nam caritas est dilectio Dei et proximi sicut suiipsius, ut cap. *proximos*, De Poenit., dist. ii; sed duellans in spectaculo duellat ut devincat proximum, et sic non diligit. Ergo inhibitum iure divino.

Qualiter duellum, inhibitum propter gloriam consequendam, prohibitum sit iure gentium.

Dicebam etiam quod erat inhibitum iure gentium. Hoc sic probatur. Ille actus est inhibitus iure gentium qui est tendens in destructionem Vniversi. Hoc genus duellandi est huiusmodi. Ergo. Maior probatur. Nam æquitas naturalis, super qua fundatur ius gentium, tendit in conservationem et augmentum Vniversi, ff. De iustit. et iure, l. i, § *ius naturale*; et l. *ex hoc iure*, ff. eod. titulo. Probatur minor. Nam hoc genus duellandi tendit in destructionem et exterminationem hominis, qui est nobilissima pars Vniversi, immo est finis productorum, ff. De usuris, l. *in pecudum*; ergo inhibitum iure gentium. Confirmatur. Ille actus est inhibitus iure gentium, qui est repugnans præceptis naturalis æquitatis, quæ est ipsum ius gentium, vel ipsius fundamentum. Hoc genus duellandi est huiusmodi. Ergo, etc. Maior probatur. Nam omne illud est iure gentium inhibitum cuius contrarium est præceptum, cum contrariorum sit eadem disciplina, ff. De his qui sunt sui vel alien. iuris, l. i; Instit., eod. tit., in princip.; xxxii dist., *hospitiolum*. Probatur minor. Nam hoc est unum de præceptis iuris gentium, quod quis non locupletetur cum aliena iactura, ut l. *nam hoc*, ff. De condic. indebiti; et regula *locupletari*, De regul. iur., Lib. VI. Hoc etiam est unum præceptum iuris gentium, quod tibi non vis fieri, alteri non facias, ut in principio Decretorum, sed hoc genus duellandi repugnat utrique præcepto. Et primo, primo præcepto, Nam duellans quærit gloriam de vituperio socii et proximi, etiam sibi fieri hoc nollet, ergo inhibitum iure gentium. Confirmatur. Ille actus est inhibitus iure gentium qui est species belli iniusti. Hoc genus duellandi est huiusmodi. Ergo. Probatur maior, nam bellum iustum solum est introductum iure, ut l. *ex hoc iure*, ff. De iustit. et iure; et l. *hostes*, ff. De captivis. Minor patet. Nam hoc non est indictum auctoritate Principis, nec propter necessariam defensam. Ergo. Ex his infertur hoc genus duellandi inhibitum iure gentium. Sed statim prædictis opponetur sic. Hoc genus duellandi fit propter experientiam fortitudinis, quæ fortitudo est virtus moralis, immo et cardinalis. Sed virtutes morales, nec earum exercitia, sunt inhibita iure gentium. Ergo non procedunt statim allegata. Quod autem hic sint actus veræ fortitudinis, quæ est virtus moralis, patet. Nam in hoc genere duellandi fit exspectatio et aggressus. Solutio. Pro evidentia huius contrarii est attendendum quod reperitur

fortitudo vera, quæ est virtus moralis et cardinalis, et illa, nec eius operatio, sunt inhibita iure gentium. Sunt etiam fortitudines similitudinariæ, de quibus Philosophus, iv Ethicorum, tractatu de fortitudine, quæ similitudinariæ participant actus aggrediendi et exspectandi, et sunt quinque. Nam aliqui aggrediuntur propter timorem pœnæ, quia fugientes de bello puniuntur. Quidam aggrediuntur propter experientiam artis bellandi, ut stipendiarii. Et isti, ut faciliter aggrediuntur, sic faciliter fugiunt, ut inquit Philosophus, ubi supra. Quidam aggrediuntur propter iram, non deliberantes periculum. Quidam aggrediuntur propter spem, non credentes subesse periculum, nec alias aggressuri, si existimarent subesse periculum. Quidam aggrediuntur propter gloriam mundi consequendam, quia fortes laudari solent, timidi autem vituperari. Istæ sunt quinque fortitudines, similitudinariæ ad veram fortitudinem, quæ est vera virtus moralis, et cardinalis existit. Ad hoc autem quod sit vera fortitudo, requiruntur hæ conditiones, videlicet, quod operetur quis scienter, nam opus ignoratum non est opus virtutis, quia prudentia debet regulare omne opus virtutis. Secundo requiritur, quod eligens. Tertio requiritur, quod eligat propter hoc, id est, propter bonitatem et honestatem operis in se, non autem propter aliquid extrinsecum. Quarto, requiritur quod operetur firmiter et delectabiliter. Omnes similitudinariæ, de quibus supra, deficiunt secundum plus et minus a vera. Omnes tamen deficiunt in hoc, quia, operantes secundum illas, non operantur propter se, id est, propter bonitatem et honestatem operis. Sic in proposito. Isti operantes aggrediendo et exspectando in hoc genere duelli, hoc faciunt propter gloriam, non autem propter bonitatem et honestatem actus in se, nec etiam hic operantur circa quod debent. Hæc colliguntur ex his quæ tractat Philosophus, iv Ethicorum, tractatu de fortitudine. Ex prædictis igitur infertur hoc genus duellandi inhibatum iure gentium.

Qualiter duellum quod fit propter gloriam inhibatum sit iure canonico et civili.

Dicebam hoc duelli genus inhibatum iure canonico et civili. Iure canonico est clarum, cum imitetur, quoad prohibitionem et permissionem, trames leges divinæ, qua hoc duellum est inhibatum, ut supra deductum est. Probat etiam rubrum et nigrum, De pugnan. in duello, licet ibi ponatur clericis, quia idem in omnibus. Melius probat titulus De torneamentis, ubi decedentibus in torneamentis denegatur sepultura. Hoc ergo clarum. Sed de iure civili qualiter sit inhibatum, hic aliquantulum est insistendum, quia lege veteri Digestorum videtur permissum genus hoc duelli. Probat textus ff. Ad leg. Aquil., l. hac actione, § si quis in colluctatione sive in pancratio; ubi apparet cessare actionem pœnalem contra occidentem in hoc duello ubi pugiles colluctantur. Lege nova Codicis videtur inhibatum, ut probat textus C. De gladiat., l. una, lib. xi. Quid ergo dicemus? Dicemus ne legem veterem esse correctam per novam, ut l. non est novum, ff. De legibus. Hic puto attendendum quod

potest fieri pugna non cruenta, ubi non tenditur ad sanguinis effusionem, ut cum aliqui brachiis colluctant, vel similibus modis, et hoc genus colluctandi non reperio inhibatum iure civili, nec veteri nec novo, immo iure novo permittuntur spectacula, propter populi recreationem, ut C. De spectac., per totum eundem librum. Potest et fieri pugna tendens ad sanguinis effusionem, ut in torneamentis et in duello ad mortem tendente, et ista sine dubio iure novo Codicis est inhibita, ut C. De gladiat., lib. xi, et ratio prohibitionis est tacta, ubi probatum est ipsum inhibatum iure divino et iure gentium. Lege autem veteri apparet permissum, ut l. *hac actione*, § *si quis in colluctatione*, ff. Ad leg. Aquiliam. Sed fortissime instabis sic. Tu dicis, hoc duellum prohibitum iure gentium, sed ius civile non est alia æquitas ab æquitate iuris gentium, immo est ipsamet æquitas iuris gentium, addens specificationem et limitationem ipsius, ut l. *ius civile*, ff. De iustit. et iure; ergo si est inhibatum iure gentium, non poterit esse permissum iure civili, alias ius civile repugnabit iuri gentium. In hoc contrario dubitavi, sed ponderavi verba, § *si quis in colluctatione*, et mentem quam credo fuisse legislatoris. Et pro evidentia pondero quod reperitur triplex permissio. Quædam est permissio simplex, quæ est remittens et indulgens pœnam, de qua habetur iv dist., *denique*, nam, ut ibi notat glossa, ibi fit remissio pœnæ, non culpæ. Secunda permissio est quæ tollit impedimenta eius quod permittitur, ut dicit textus quod Iudæi permittuntur habitantes inter nos, nam tolluntur impedimenta, impediencia ne possint secundum eorum ritus habitare nobiscum, ut xlv dist., *qui sincera*. Reperitur et tertia permissio, quæ præstat iuvamen actui qui permittitur, secundum quod dicimus quod ecclesia aliquando permittit clericum occidi a iudice sæculari, præstando iuvamen, quia ipsum positive tradit, ut cap. *cum non ab homine*, De iudic.; et cap. *ad falsariorum*, De crim. falsi; et cap. *novimus*, De verb. significatione. Secunda permissio addit supra primam, quia impedimentum tollit, quod non faciebat prima, immo solum pœnam remittebat. Tertia addit supra secundam, quia præstat iuvamen actui permissio, quod non faciebat secunda, immo solum impedimenta tollebat. Nunc verba applicando ad propositum, si bene pondero, § *si quis in colluctatione*, ibi textus remittit pœnam occidenti in colluctatione, et subditur ratio, quia non fit iniuriæ causa. Erit igitur permissio prima pœnæ remissoria, sed nullibi reperio cautum iure quod hoc duellum sit permissum secunda vel tertia permissione. Hæc autem non repugnant quod ius gentium inhibeat, et civilis lex pœnam remittat, nam lex civilis, imponens pœnam pro homicidio, imponit propter dolum, et sic, quia hic dolus abest, lex civilis pœnam remittit, ut supra inductum est. Ex his infertur circa hoc genus duelli, quo iure inhibatum sit, et quo iure permissum.

Propter quid permissum, et propter quid inhibatum, sit duellum?

[Cap. clxxv.]

Circa quartum membrum, quo quærebatur propter quid sit permissum et propter quid inhibatum, est videndum de duello quod fit gratia purgationis, quo iure sit inhibatum et quo permissum. Et hoc proprie et stricte "duellum"

apud vulgares nuncupatur. Et dico quod duellum est inhibitum iure divino, et iure gentium, et iure positivo. Canonico, indistincte. Civili, regulariter, sed iure Lombardo in casibus permittitur, ut subdam, cum illos discutiam.

Qualiter duellum purgatorium inhibitum sit iure divino.

Quod iure divino inhibitum sit hoc duellum, probatur sic. Ille actus est inhibitus iure divino per quem fit Dei temptatio. Sed hoc duellum est huiusmodi. Ergo. Probatur maior per illud præceptum, "Non temptabis Dominum Deum tuum." Probatur minor, nam tunc temptatur Deus, cum perquiritur aliquid contra naturam, quod non est producibile, nisi miraculo divino; sic est directe in hoc duello purgationis. Nam naturale est quod fortior et ingeniosior vincat minus fortem, et minus ingeniosum. Nec, econtra, fieri potest ordine naturali, sed aliquando minus fortis et minus ingeniosus fovet iustitiam, et per duellum quærimus ut victoriam obtineat, et eius iustitia declaretur. Sic igitur Deus temptatur, ut miraculum faciat. Confirmatur. Ille actus est inhibitus iure divino qui est adinventus fabricante diabolo. Hoc duellum est huiusmodi. Ergo. Probatur maior. Nam nihil commune Dei ad Diabolum, lucis ad tenebras. Minor probatur per cap. *Mennam*, ii, q. v; et cap. *consuluisti*, eadem causa et quæstione. Confirmatur. Ille actus est inhibitus iure divino per quem innocens damnatur. Hoc duellum est huiusmodi. Ergo. Probatur maior. Nam Deus non vult damnari innocentem, xxii, q. ii, cap. *quæritur*. Probatur minor per cap. *significantibus*, De purg. vulgari. Ergo.

Qualiter duellum purgatorium inhibitum sit iure gentium.

Secundo dixi, hoc duellum inhibitum iure gentium. Hoc probatur sic. Ille actus est inhibitus iure gentium qui repugnat naturali æquitati, super qua fundatum est ius gentium. Sed duellum purgationis est huiusmodi. Ergo. Patet maior. Probatur minor. Nam dictat æquitas iuris gentium delinquentes puniri, insontes absolvi. At in hoc duello contingit quandoque econtra. Ergo inhibitum iure gentium. Etiam repugnat illi præcepto "quod tibi non ius," in principio Decretorum.

Qualiter duellum purgatorium inhibitum sit iure canonico.

Dixi et ipsum inhibitum iure canonico. Hoc claret De purg. vulg., per totum; De pugnan., per totum; ii, q. v, a capitulo *consuluisti* usque ad finem quæstionis. Et rationes possent reddi quæ redditæ sunt ad probandum quod sit inhibitum iure divino, cum ius canonum imitetur prohibitiones et permissiones legis divinæ. Confirmatur. Et per hoc probatur etiam quod iure civili sit inhibitum. Nam actus ille est inhibitus iure positivo, per quem fit exclusio observantiæ iuris positivi. Hoc duellum est huiusmodi. Ergo. Probatur maior. Nam si observantia est mandata a lege positiva, ergo observantiæ exclusio est inhibita, ut, sicut propositum in proposito, ita oppositum in opposito, ff. De his

qui sunt sui vel al. iur., l. i; Instit., eod. tit., in princip.; xxxii dist., *hospitiolum*. Probatur minor, nam iure positivo introductæ sunt actiones, tam civiles quam criminales, et tota forma iudiciaria, per quam proceditur ad iura partium declaranda, ut l. *properandum*, C. De iudiciis; Authent., *offeratur*; et l. una, C. De litis contest.; et l. *prolatam*, C. De sentent. et interloc. omn. iudic.; et cap. *quoniam contra*, De probationibus; ut unicuique reddatur quod suum est, xii, q. ii, *cum devotissimam*; et l. *iustitia*, ff. De iustit. et iure; et § *iustitia*, Instit., eod. titulo. Sed duellando hæc observantia penitus excluditur. Ergo hoc duellum est iure positivo inhibitum. Confirmatur. Ille actus est iure positivo inhibitus per quem partibus iustitia denegatur, sed hoc duellum est huiusmodi. Ergo. Probatur maior, quia ad hunc finem promulgata sunt iura positiva, divinitus per ora principum, ut l. ult., C. De long. tempo. præscript.; viii dist., *quo iure*; xvi, q. i, *placuit*. Probatur minor, nam per hoc duellum aliquando contingit innocentem succumbere in duello, et sic sibi iniuriam irrogari, et aliquando contingit nocentem obtinere, et sic non fit iustitia provocanti. Ex his infertur hoc genus duelli quod fit propter purgationem et criminis impetitionem fore inhibitum iure positivo; canonico, indistincte; civili, regulariter.

Qualiter duellum purgatorium iure civili regulariter sit inhibitum.

Dixi etiam regulariter iure civili inhibitum hoc duellum. Fallit tamen in duobus casibus per Legem Frederici, De pace tenenda et eius violatoribus, ut puta, si quis intra tempora pacis hominem occiderit, et constet de homicidio, punitur poena capitali, ut fractor pacis, nisi per duellum probare voluerit quod hoc fecerit se defendendo, et est ille specialis casus quo duellum est in optione rei. Alter casus, si intra tempora pacis vulneraverit, punietur, nisi probare voluerit quod hoc fecerit se defendendo. Hi duo casus habentur De pace tenenda et eius violatoribus, l. una, primus in § *si quis hominem infra pacem*, secundus in § *si quis alium*, in eadem lege. In aliis autem casibus permittitur iure Lombardorum, ut infra prosequar. Ex his concluditur tertium principale membrum huius tractatus, scilicet, quo iure sit duellum introductum, et quo inhibitum, distinguendo singulas species duelli. Per prædicta igitur patet explicatio quarti membri videlicet, propter quid inhibitum, et propter quid permissum. Nam duellum primum omni iure est inhibitum, et nullo permissum, et propter quid supra apparuit. Sic de secundo, et sic de tertio, singula tacta singulis membris ad hoc propositum reducendo.

In quibus casibus duellum purgatorium permittatur?

[Cap. clxxvi.]

Circa quintum principale, videlicet, in quibus casibus permittatur duellum, est videndum. De prima specie dictum est quod nullo casu. De secunda specie dictum est qualiter. De tertia specie nunc videndum, cum illa iure Lombardo pluribus casibus permittatur, et solum circa tertiam speciem insiendum usque ad finem tractatus.

Qualiter duellum purgatorium iure Lombardo in xx casibus permittatur.

Quærendum est igitur, quibus casibus hoc duellum permittatur, ultra duos supra notatos, qui habentur in Lege Frederici, De pace tenenda et eius violatoribus? Solutio. Permittitur duellum in crimine legis Iuliæ maiestatis, cum quis alium impetit super illo crimine, ut in Lombarda, De publicis criminibus, l. *si quis*, et est ultima. Fit secundo, cum dicitur uxorem conciliatam in mortem viri, ut in Lombarda, De consilio mortis, l. *si mulier*, et est ultima. Fit et tertio, in iniuria cucurbitationis, ut si quis aliquem vocaverit "cucurbitam," ut in Lombarda, De conviciis, l. *si quis alium*. Fit et quarto casu, de homicidio commisso intra treugam, ut in Lombarda, De homicidio, l. *qui intra treugam*. Fit quinto, pro homicidio commisso in absconso, ut in Lombarda, De homicidio, l. *liber homo*. Fit sexto, in crimine parricidii, si dicatur commissum propter cupiditatem bonorum ipsius, ut in Lombarda, De parricidio, l. ult., in fine. Fit septimo, de furto commisso a servo, si dominus negaret servum suum fecisse furtum, ut in Lombarda, De furtis, l. *si quis alium*, et fuit lex convalcosiana, secundum quosdam. Fit octavo, in crimine adulterii, ut si quis accusetur adulterasse uxorem alterius, ut in Lombarda, De adulterio, l. iii. Fit nono, si quis dicat aliquam mulierem adulteratam, et sic probare velit, ut in Lombarda, De iniur. mulier., l. ii, incipit *si quis puellam*. Fit decimo, si dicatur quem malo ordine possedissem rem mobilem sive immobilem xxx annis, ut in Lombarda, De præscript., l. *si quis alium*. Fit undecimo, inter contrarios testes, ut in Lombarda, De testi., l. *si quis cum altero*; quod procedit si producantur ab utraque parte, si autem ab eadem parte, non fit duellum. Nam aut actor probat, et condemnatur reus, aut nihil probat, et absolvitur reus. Sed si ab utraque parte producantur, et cetera sint paria, tunc fit duellum. Fit duodecimo, propter debitum paternum, contra filium negantem, ut in Lombarda, Qualiter quis se defendat, et in quibus casibus pugna prohiberi vel fieri debeat, l. *si quis post mortem*. Et verus intellectus illius legis est quod intelligatur debitum ex maleficio. Fit tertiodecimo, propter incendium, si agatur contra malefactorem, ut in Lombarda, Qualiter quis se defen., etc., l. *si quis alium*. Non autem fit si agatur contra conciliatorem, ut in Lombarda, De consiliis illicitis, l. una, in fine. Fit quartodecimo, pro adulterio, ut si maritus dicat uxorem suam adulteram esse, ut in Lombarda, Qualiter quis se defendat, etc., l. *si quis uxorem*. Fit quintodecimo, si maritus suspicetur quod quis turpiter se habuerit cum uxore, et intelligit lex turpiter tangendo, ut in Lombarda, Qualiter quis se defendat, etc., *si quis amodo*. Fit et sextodecimo pro periurio, ut in Lombarda, Qualiter quis se defendat, etc., l. *de furto*. Fit septimodecimo, etiam duellum pro investitura, ut si quis dicat se primo investitum, et de possessione electum, et alius dicat idem, ut l. *de investitura*. Fit octavodecimo, pro deposito negato, ut si depositum sit ultra solidos xx, ut l. *si quis pro se*. Fit nonodecimo, si dicatur quod aliquis cartam per vim extorserit, ut l. *si quis dixit*, in Lombarda, Qualiter quis se defendat, etc. Vicesimo et ultimo, fit duellum pro libertate petita a servo, ut l. *si servus*. Quidam dicunt quod illa lex fuit convalcosiana.

Inter quos iniri debeat duellum ?

[Cap. clxxvii.]

Circa sextum principale, videlicet, inter quos iniri possit duellum, est videndum.

Qualiter duellum purgatorium inter principales regulariter fieri debeat ?

Et dico quod hoc habet regula, attento iure Lombardo, quo duellum permittitur in casibus supra narratis, quod duellum sit inter principales. Sed illa regula fallit in octo casibus. Primus, si iuvenilis ætas impediat. Secundus, si ætas decrepita, nam in ea labor et dolor. Tertius, si infirmitas aliqua duellare prohibeat. Isti tres casus habentur in Lombarda, Qualiter quis se defendat, etc., l. *quacunque lege*; et De parricidio, l. ultima. Quartus est, si servus, qui est in quasi possessione servitutis, proclamat in libertatem, tunc dominus duellat per campionem, ut in Lombarda, Qualiter quis se defendat, etc., l. *si quis servus propter appetitum*. Quintus, si ecclesiastica sit persona, ut puta clericus, vel Comes, causas habent adinvicem, vel cum aliis, tunc pugnant per campionem, ut in Lombarda, Qualiter quis se defendat, l. finali. Sextus, ubi mulier accusatur de adulterio, ut in Lombarda, eod. tit., l. *si quis uxorem*. Septimus, si testes actoris sunt contrarii testibus rei, tunc testes actoris debent assumere unum campionem, et testes rei assumere alium, ex testibus met.^o, ut in Lombarda, eod. tit., l. *si quis cum altero*. Octavus, si servus accusetur de furto, ut in Lombarda, De furtis, l. *si servus, dum de furto*. Hodie tamen de consuetudine permittitur cuilibet habere campionem.

Qualiter fiat duellum ?

[Cap. clxxviii.]

Circa septimum principale, scilicet, qualiter fiat duellum, est videndum.

Qualiter duellum purgatorium ad instar sit iudicii contentiosi ?

Et hic præmitto quod duellum est redactum ad instar iudicii contentiosi, nam sicut in iudicio contentioso sunt actor, reus, iudex, instrumenta causam instruentia, per quæ, largo modo sumpta pro quibuscunque causam instruuntibus, ut l. i, ff. De fide instrum., fit veritatis declaratio, ut feratur definitiva sententia, sic in duello sunt actor et reus, ut puta provocans et provocatus, iudex, instrumenta, utpote arma, quibus se invicem percutiunt. Nam sicut in iudicio contentioso quis alium convincit testibus, scripturis, et confessionibus, ut De restit. spol., *cum ad sedem*, sic in duello armis corporalibus convincit, ut sicut in primo sic convictus est, in casu condemnationis, sic a simili convictus in hoc. Ad similitudinem igitur iudicii contentiosi quærendum est de hoc iudicio, scilicet, duellari.

[Cap. clxxix.]

An iuramentum de astu inter duellantes sit præstandum et per quem ?

Et primo quæro, utrum iuramentum de astu sit præstandum, et an per provocantem et provocatum, an per alterum, et per quem ? Et iuramentum de astu in hoc iudicio idem est quod iuramentum de calumnia in iudicio contentioso fori civilis vel ecclesiastici. Et videtur quod uterque iurare debeat. Nam iuramentum de calumnia præstat in iudicio contentioso per actorem et reum, ut l. i et l. ii, C. De iur. calumn., et Authent., *principales*, eod. tit. ; Extra., eod. tit., per totum. Ergo hic a simili, cum sit eadem ratio, et sic eadem iuris dispositio, ff. Ad leg. Aquil., l. *illud* ; C. Ad leg. Falc., l. ult. ; De constitut., *translato* ; cum similibus. Solutio. Hic fuerunt opiniones variæ, attento iure Lombardo. Vna fuit opinio, et fertur quod fuit Mantuanorum, quod in hoc iudicio duellari præstat sacramentum de astu ab utroque, tam ab actore quam a reo, et sic, secundum eos, corriguntur omnia iura loquentia de sacramento de astu non præstando. Adducunt, quod habetur in Lombarda, Qualiter quis se defendat, l. *mentio*. Sed illa lex habet quatuor intellectus. Vnus, quod intelligatur in testibus contrariis, ut potius fiat duellum quam periurent. Secundus, quod intelligatur in duobus contendentibus se possidere, ut potius duellent quam deirent. Tertius, quod intelligatur in eo contra quem iuratum est, quod furtum commiserit, et ille vult iurare contrarium. Quartus, cum duo litigant coram iudice, et unus iuravit de lato iuramento, et alter vult iurare contra. Horum sententia reprobari videtur, quia non est hoc cautum iure, immo contrarium, ex parte rei, ut solus actor iuret, ut in Lombarda, Qualiter quis se defendat, l. *si quis alium astu*. Fallit ubi fit duellum propter contrarietatem testium, ut in Lombarda, De testi., l. fin. ; et Qualiter quis se defendat, l. *si quis cum alio*. Secunda fuit opinio Domini Caroli Beneventani, qui voluit distinguere an quis veniat ad duellandum in causa ipsum totaliter contingente, aut prorsus aliena, an principaliter aliena, secundario sua. In primo casu, utpote cum quis provocat aliquem super furto, vel incendio, sibi facto, vel adulterio uxoris suæ, tunc refert aut provocando dicit, "tu commisisti," aut dicit, "suspisor quod commiseris." Primo casu, debet iurare rem ita esse. Secundo casu, debet iurare quod iustam habet suspicionem, et cum provocat ratione suspicionis, debet addicere causam suspicionis, utpote quod ipsum viderit loqui cum uxore sua, et sic de aliis. Si autem provocat ad duellum in causa aliena, id est, non propter aliquid commissum contra se, sed contra alium, utpote cum provocat super crimine læsæ maiestatis, tunc, cum accedat, ut testis, debet iurare sic esse, ut præstat iuramentum testis, ut C. De testi., l. *iurisiurandi* ; De testi., cap. *tuis*, et cap. *cum nuntius* ; cum similibus. Et sic dicit in reo, ut iuret rem sic non esse. Hæc opinio, quoad sacramentum rei, reprobat, ut supra proxima. Tertia fuit opinio, et fertur fuisse Papiensium, videlicet, quod ex parte rei et provocati nullum præstari debeat iuramentum, sed ex parte actoris. De actore probatur in Lombarda, Qualiter quis se defendat, l. *si quis astu*. De reo probant. Nam reus tenetur ad alterum duorum, vel pugnet, vel si renuit, condemnetur. Sic igitur iuramentum pro parte rei nihil operatur, et sic ut superfluum resecandum, l. *ampliolem*, § *in refutatoriis*, C. De

appel. ; l. *non cogendum*, § *Sabinus*, ff. De procuratoribus. Quarta fuit opinio, et fuit cuiusdam Alberti, qui voluit dicere quod actor semper iurat præterquam in crimine læsæ maiestatis, et testibus contrariis, et investitura prædii. In reo concordat cum aliis, præterquam cum Papiensibus. Et hoc credo in actore verum, quod regulariter præstet, præterquam in casibus de quibus supra. Et est ratio ut compellatur reus se purgare, non præcedente aliquo iudicio contra eum. Immo volunt iura, ad minus præcedere infamiam, et deficientibus probationibus exponitur purgationi, De purgat. canon., per totum ; ii, q. iv, per totum ; De accusat., *qualiter*, ii, et ibi notandum. Sic igitur iure Lombardo, quo duellum permittitur in casibus supra enumeratis, ad minus ex parte actoris præcedat iuramentum, et iuramentum debet esse conforme provocationi, ut si provocat de rei existentia, sic iuret si de suspicione, sic etiam iuret ut etiam differentia notatur inter iuramentum calumniæ et veritatis, ut, unum de credulitate, aliud de veritate, ut dixit dominus Carolus. In reo autem non concipio rationem necessitatis iuramenti.

An uni parti dato campione, in casibus a iure permissis, licitum sit alteri parti dare campionem? [Cap. clxxx.]

Secundo quæro, numquid si alicui partium detur campio, in casibus permissis a iure Lombardo, qui sunt octo, ut supra notavi, an tunc liceat alteri parti dare campionem? Solutio. Hic fuerunt opiniones variæ. Aliqui dicunt quod sic. Allegant quod habetur in Lombarda, Qualiter quis se defendat, l. *quicunque*. Fallit in casu ubi servus contendit contra dominum. Secunda fuit opinio, quod alteri parti non liceat. Tunc et est ratio. Nam lex tunc in tribus casibus permittit, ergo denegat in aliis, ut ff. De legi., l. *ius singulare* ; ff. Ad municip., l. i ; ff. Solut. matrimon., l. *si cum dotem* ; C. De procur., l. *maritus* ; De translatione prælatorum, cap. *inter corporalia* ; cum similibus. Ego credo hic ponderandum quod in hoc [refert] differt hoc iudicium duelli a iudicio contentioso, nam in iudicio contentioso regulariter quis per alium litigat, et propter hoc inventus est procuratorum usus, ut ff. De procurat., l. i, et [l.] § *usus* ; sed in duello regulariter solum per se, et in hoc æquiparatur iudicio criminali, in quo non intervenit procurator ad causas causæ allegandas, ff. De public. iudic., l. *pænult.*, § *qui ad crimen* ; et l. *servum quoque*, § *publice*, ff. De procurat. ; et cap. *licet*, et cap. *veniens*, De accusationibus. Et est ratio, quia in persona^o procuratoris non potest ferri sententia condemnatoria, quia innocens ; in personam domini, non, quia absens, ff. De pœnis, l. *absentem* ; sic directo in duello, nam in duello duellantes ad prostrationem personarum tendunt, ut ex hoc eliciatur veritas per hoc genus probationis. Et sic regulariter non intervenit campio, præterquam in casibus permissis. Si igitur emergat casus dandi campionis ex parte unius, et non emergat ex parte alterius, ille solus dabit campionem. Si autem utrinque emergat casus, uterque dabit, nisi dicas propter æqualitatem hinc inde servan-

dam, ubi licitum uni det alter, ut l. *terminato*, C. De fruct. et lit. expensis; De mutuis petit., cap. i, et per totum titulum; regula *non licet*, De regul. iur., Lib. VI; et hoc sapit æquitatem, sed prius dictum verius de rigore iuris.

[Cap. clxxxi.] *Qualiter in casibus hinc inde, cum conceditur campio, fiet ipsorum datio et concessio?*

Tertio quæro, qualiter in casibus hinc inde, cum conceditur campio, fiet ipsorum datio et concessio? Solutio. Hic pondero quod, sicut in foro contentioso causa peroratur, sic per campiones in iudicio duellari, et sic infero quod, sicut in iudicio contentioso fieri debet æqua advocatorum distributio, ut l. *providendum*, C. De postul., sic, ubi hinc inde fit campionum concessio, debet fieri ipsorum æqua distributio. In principalibus autem duellantibus non est ponderanda æqualitas, vel inæqualitas, cum causam propriam propriis viribus corporis sponte ad exitum perducant.

[Cap. clxxxii.] *An quilibet admittatur pro campione?*

Quarto quæro, an quilibet admittatur pro campione? Solutio. Vt dictum est, hic æquiparatur campio avvocato, sicut igitur quilibet admittitur ad postulandum, nisi sit prohibitus, ut l. i, ff. De postul.; sic quilibet admittitur ad officium campionatus, nisi repellatur a iure. Repellitur autem fur, ut in Lombarda, Qualiter quis se defendat, l. *si ut campionem*. Et est ratio, quia infamis, ff. De furt., l. *non potest*; et si succumbit, præsumitur ratione proprii delicti succumbere, sic et alii criminosi gravibus criminibus irretiti, ratione prædicta.

[Cap. clxxxiii.] *In cuius electione sit duellum?*

Quinto quæro, in cuius electione est duellum? Solutio. Regulariter in electione actoris, sicut dicimus in iudicio contentioso. Hoc habetur in Lombarda, Qualiter quis se defendat, l. *si quis amodo*. Fallit in crimine læsæ maiestatis, ubi ex necessitate cogitur duellare, et si aliquis dixerit "argam," ut in Lombarda, De publicis criminibus, l. fin.; et in Lombarda, De iniur. mulier., l. ii.

[Cap. clxxxiv.] *Qualiter ordinetur duellum?*

Sexto quæro, qualiter ordinari debeat duellum? Solutio. Iure non est cautum, sed consuetudine observatur, quod eligatur locus parvus amplius in civitate vel extra, qui locus circumcirca claudatur chordis, ita ut, misso banno, nullus audeat intrare nisi duellantes, nec audeat tumultum facere, propter

quem altera pars offendi posset. Et iudex erit ibi, in loco ut videre possit utrumque duellantium, et qualiter unus alium recipiat, ut finaliter iudicet in duello an quis succubuerit.

Quibus armis duellari debeat ?

[Cap. clxxxv.]

Septimo quæro, quibus armis duellari debeat ? Solutio. Iure Lombardo permittuntur scuta, fustes, ut in Lombarda, De testi., l. *si quis cum altero* ; et Qualiter quis se defendat, l. *mentio* ; et hæc debent esse æqualia et a iudice præstari.

An si arma, seu fustes, unius duellantium frangantur, vel cadant, debeant alia dari ?

[Cap. clxxxvi.]

Octavo quæro, quid si arma, seu fustes, unius duellantis frangantur, vel cadant, an debeant alia dari. Et videtur quod sic. Nam dicit textus quod pugna debet fieri cum fustibus et scutis, ut in Lombarda, Qualiter quis se defendat, l. *mentio* ; et in Lombarda, De testi., l. *si quis cum altero* ; sed nisi alia darentur, non fieret cum fustibus. Ergo. Confirmatur. Nam fustes in duello æquiparantur testibus et instrumentis in iudicio contentioso, sed in foro contentioso fit multiplicatio productionis testium et instrumentorum, etiam si aliquorum dicta frangantur ante publicationem et notitiam dictorum, ut in Authent., De testi., § *si vero* ; De testi., *fraternitatis* ; et Clemen., *testibus*, eod. titulo. Quidam hoc tenent in frangente, secus si cadant, quia tunc debet imputari fortunæ suæ. Alii dicunt quod in nullo casu sunt præstanda, sed imputari debet fortunæ suæ. Alii dicunt stari consuetudini super hoc. Ego credo opinionem secundam fore veram, scilicet, quod non sint alia præstanda, sive cadant, sive frangantur, nisi aliud habeat consuetudo quæ operari potest effectum, ut lex ff. De legi., l. *de quibus* ; C. Quæ sit long. consue., l. ii ; xi dist., *consuetudinis* ; i dist., *consuetudo*. Et est ratio. Nam in duello, ut dixi in principio tractatus, quæritur aliquando quid contra naturam, ut quod minus fortis, et quod minus industrius, vincat fortiolem et magis industrius, quod aliquando contingat casu intercedente. Ergo uterque duellantium dimittendus est subiectioni casuum quibus se libere exposuerunt, alias transiret natura duelli ad purgationem indicti. Confirmatur. Nam, si diceremus dari nova arma, ubi caderent, sic a simili diceremus duellantem cadentem sublevari, quod est absurdum. Nam propter hos casus, aliquando contingit potentiolem succumbere, et in hoc demonstratur iudicium divinum.

Quis duellantium primo percutere debeat ?

[Cap. clxxxvii.]

Nono quæro, quis in duello prius percutere debeat ? Et videtur quod provocans, nam hoc iudicium duellare est simile iudicio contentioso, ut supra tactum est sæpius. Sed in iudicio contentioso actor primo porrigit libellum reo, et postea reus respondet, ut in Authent., *offeratur*, C. De lit. contestat. ; et

cap. i, De libel. oblatione. Ergo a simili, provocans primo percutiet provocatum. In contrarium videtur, reus favorabilior est, ut l. *Arrianus*, ff. De obl. et act. ; et regula *favorabiliores*, ff. De regul. iur. ; regula *in pœnis*, eod. tit., lib. vi. Solutio. Credo primam partem veram, nec obstant allegata in contrarium, quia illa iura loquuntur in finibus iudiciorum, cum non restat nisi definitiva sententia, quia tunc favendum est reo. Sed circa principia favendum est actori, ut l. *si quis intentione ambigua*, ff. De iudic. ; et l. *inter stipulantem*, § i, ff. De verb. obligationibus. Vel dici posset quod hic non est servandus ordo, sed locus est præventioni vel etiam concursui.

[Cap. clxxxviii.] *An duellum, prima die non terminatum, sequenti die possit terminari ?*

Decimo quæro, an, si duellum terminari non possit prima die, possit ad sequentem diem deferri ? Solutio. Dico quod sic. Dico enim donec finiatur instaurandum est.

[Cap. clxxxix.] *An succumbens in duello condemnatur in expensis ?*

Vndecimo quæro, numquid succumbens in duello debeat in expensis condemnari adversario ? Solutio. Ad similitudinem iudicii contentiosi, quo victus victori condemnatur in expensis, ut l. *properandum*, § *sin autem*, C. De iudiciis ; et l. *terminato*, C. De fruct. et lit. expens. ; et cap. *finem*, De dolo et contum. ; cap. *calumniam*, De pœnis. Posset sic in duello dici "victus victori," etc.

[Cap. cxc.] *An provocans in duello succumbens puniatur pœna talionis ?*

Duodecimo quæro, an provocans in duello succumbens puniatur pœna talionis ? Solutio. Ad similitudinem iudicii criminalis contentiosi, ubi imponitur pœna talionis accusanti succumbenti, ut cap. *super his*, De accus. ; et cap. *licet*, eod. tit. ; et l. *fin.*, C. De accusat. ; sic in duello, cum duellatur propter crimen puniendum ad publicam vindictam.

[Cap. cxci.] *An provocatus ad duellum propter crimen, succumbens et condemnatus, possit de eodem crimine in iudicio contentioso accusari ?*

Tertiodecimo quæro, an provocatus ad duellum propter crimen, succumbens et condemnatus, possit de eodem crimine accusari in iudicio contentioso ? Solutio. Posset dici quod, cum iure civili duellum purgatorium non approbetur, immo penitus reprobetur, ut l. *una*, C. De glad., lib. xi ; et de iure canonico, ut in De pignant. in duello ; et De purg. vulg., per totum, ut etiam supra in principio tractatus tactum fuit. Hæc definitio, lege reprobata, paret præiudicium iuridicæ discussioni, et sic non obstat cum de delicto eiusdem sæpius non sit quærendum, ut l. *licet*, in fine, ff. Naut. caup. stabul. ; et cap. *de his*, De accusat. ; quia illa iura loquuntur, cum prior examinatio et discussio fuit iuridica, et sic infertur quod absolutoria lata in duello non parat exceptionem

rei iudicatæ, accusare volenti in iudicio contentioso. Hæc vera, nisi consuetudo regionis aliud induceret, ut, videlicet, servaretur Ius Lombardum, secundum cuius dispositionem consecutus sum hunc passum, et sic limitandæ sunt solutiones præcedentium quæstionum.

An provocans ad duellum propter crimen publicum, desistens a duello, incidat pœnam Turpiliani ? [Cap. cxcii.]

Quartodecimo quæro, numquid provocans ad duellum propter crimen publicum, desistens a duello, incidat pœnam Turpiliani ? Et videtur quod sic, ad instar criminalis iudicii contentiosi, ut l. i, § *si quis autem*, ff. Ad Turpilianum. Solutio. Iure communi non procederet quæstio, cum iure communi sit reprobatum hoc iudicium, ut supra. Sed, iure quo permissum, posset dici ex eadem æquitate ipsum puniendum, et dico arbitrio iudicis, cum non sit iure expressa, De offic. iudicis delegat., cap. *de causis*, in fine ; ff. De iur. delib. 7, l. i. Pœnam tamen Turpiliani non credo ipsum incidere, cum pœnæ sint restringendæ, ut l. *cum quidam*, ff. De lib. et posth. ; et § *pœnæ*, De Pœnit., dist. i ; regula *in pœnis*, De reg. iuris, lib. vi. Hæc, ut dixi, iure Lombardo procedunt. Nam iure communi, recedens a duello non punitur, immo talis legi obtemperat, et prosequens facit contra legem.

An provocans ad duellum iure Lombardo possit desistere cum licentia iudicis ? [Cap. cxciij.]

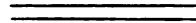
Quintodecimo quæro, numquid provocans ad duellum iure Lombardo possit desistere cum licentia iudicis ? Apparet quod sic, ad instar accusantis abolitionem impetrantis, ff. Ad Turpil., l. *abolitio*, et l. *si quis interveniente*, et l. *Domitianus* ; C. De abolit., per totum. Solutio. Iure communi hoc clarum, quia sine abolitione, et bene facit. Iure Lombardo credo etiam quod iudex ex causa concedere potest, ad instar accusatoris, ut supra allegatum est.

An provocans ad duellum desistere possit sine pœna ante litem contestatam ? [Cap. cxciiv.]
Item et quando in duello dicatur lis contestari ?

Sextodecimo quæro, an provocans ad duellum desistere possit sine pœna ante litem contestatam, et, cum hoc, etiam quæro, quando, proportionaliter in iudicio contentioso, in duello lis dicatur contestari ? Et videtur quod ante sine pœna possit desistere. Nam ante litem contestatam non dicitur quis "agere," sed "agere velle," ut l. *amplius*, ff. Rat. rem haberi. Ergo ante desistere poterit. Confirmatur. Nam ante litem contestatam desistenti par-citur, ff. De in ius vocando, l. *quavis*. Ergo. Confirmatur, per l. *sine metu*, C. De adulter. ; et ff., l. *miles*, § *socer*, eod. tit. ; et l. *quæsitum*, ff. Ad Turpilianum. In contrarium facit l. *in senatus*, § *qui post*, ff. Ad Turpilianum, ubi probat textus quod desistens ab accusatione ante litem contestatam incidat in Turpilianum. Idem probat l. *pœnult.*, C. De calumniatoribus.

Solutio. Hæc quæstio præsupponit alterius quæstionis decisionem, scilicet, quando lis proportionaliter contestari dicatur in hoc iudicio duellari. Et videtur quod post unam percussorem actoris, et aliam rei, quia in iudicio contentioso sic fit contestatio per petitionem et contradictionem secutam, ut l. *rem non novam*, § *patroni*, C. De iudiciis; et Authent., *offeratur*, C. De litis contestat.; et cap. uno, eod. tit., Extra. Sed prima percussio habetur loco libelli, secunda percussio, quæ fit a reo, est contradictio, ergo sic fit litis contestatio. Contrarium credo verum, scilicet, quod fiat litis contestatio, cum provocat, asserendo quod crimen commiserit, et ille negat. Quod hoc sit verum patet. Nam post litem contestatam præstatur iuramentum de calumnia, in Authent., Vt litigantes iurent in exordio litis, in princip.; et l. ii, C. De [iuramento calumniæ] iureiurando propter calumniam. Sed duellantes, post hanc verbalem provocationem et contradictionem, iurant de astu, ut supra deductum est. Incipit ergo duellum a verbali proclamatione, sed percussuræ habentur, loco probationum per testes et instrumenta, quæ fiunt post litem contestatam, Vt lite non contestata, per totum. Et sic modifica solutionem quæstionis qua quæsi quis primo percutere debeat. Hac solutione præmissa, principalis quæstio incidit in quæstionem illam, an pœna Turpiliani vindicet sibi locum ante litem contestatam. Et glossæ sunt contrariæ. Vna est in l. [si] *miles*, § *socer*, ff. De adulteriis, et fuit Hugolini, et tenet quod non incidat. Alia est in l. i, C. Ad Turpilianum, quæ tenet quod incidat, et fuit Azonis, et illam credo veram per l. *in senatus*, § *qui post*, ff. Ad Turpilianum; et per Authent., *qui semel*, C. Quomodo et quando iudex. Tamen dicit Petrus quod accusator pænitere potest antequam reus citatus veniat; sic intelligit l. *quæsitum*, ff. Ad Turpilianum. Et simili modo habetur solutio præmissæ quæstionis, loquendo de iure Lombardo, ut supra. Deo gratias.

Explicit tractatus De Bello compilatus per me, Iohannem de Lignano de Mediolano, minimum iuris utriusque doctorem, in studio Bononiensi, MCCCCLX, pendente forti exercitu contra civitatem, qui causam dedit tractatui, ut Scholaribus tunc causa foret exercitii, Doctorum autem subiceretur correctioni. Deo gratias. Amen.



TABVLA TRACTATVS

TRactatus iste De Bello prima sui divisione dividitur in tres partes principales, quarum ultima in sex tractatus dividitur et subdividitur, prout tibi per tabulam istam clarius infra demonstrabitur, rubricellis suis suo ordine collocatis. [Cap. i.]

Prima pars principalis.

Quid sit Bellum, et qualiter describatur ?

Secunda pars principalis.

De divisione Belli et qualiter dividatur.

[Cap. ii.]

Tertia et ultima pars principalis

ponit ordinem tractatum, et dividitur in sex principales tractatus.

Primus tractatus.

De Spirituali Bello Cœlesti.

Qualiter Spirituale Bellum Cœleste est metrum et mensura Spiritualis Humani Belli.

De naturali deductione Spiritualis Belli corporum cœlestium ad bella terrestria.

Qualiter, secundum astrologos et naturales philosophos, necessario sit dare bellum.

Secundus tractatus.

De Spirituali Humano Bello, secundum theologiam.

[Capp. iii-vi.]

De Spirituali Humano Bello, secundum moralem philosophiam.

[Capp. vii, viii.]

Tertius tractatus,

[Cap. ix.]

scilicet, De Vniversali Corporali Bello,

et iste dividitur in sex tractatus.

[Cap. x.] *Primus tractatus, scilicet, quo iure introductum sit ?*

Qualiter iure divino ortum habuerit Bellum Vniversale Corporale ?

[Cap. xi.] Qualiter iure gentium ortum habuerit Bellum Vniversale Corporale ?

[Capp. xii-xiv.] *Secundus tractatus tertii principalis, scilicet, quibus liceat bellum indicere universale ?*

Quibus primo et principaliter, et quo iure, et contra quos, bellum indicare liceat universale ?

[Cap. xv.] An bellum motum per Imperatorem contra Ecclesiam sit iustum, et an teneantur subditi in hoc obtemperare ?

[Cap. xvi.] Quid econtra iuris sit, cum Papa, scilicet, movet bellum contra Imperatorem ?

[Cap. xvii.] *Tertius tractatus tertii principalis, scilicet, quæ sint aggregantia bellum ?*

De legione et cohorte, et qui et quot numero in eis requirantur ?

[Cap. xviii.] Qualiter milites se habere debeant in bello, et cui obediant, et a quibus abstinere præcipiuntur ?

[Cap. xix.] Quæ pertineant ad officium ducis belli ?

[Cap. xx.] Qualiter varie puniuntur milites, prout varie delinquant ?

[Cap. xxi.] De fortitudine, et ipsius natura, et quæ fortitudo dicatur moralis, et quæ non, et quæ bellum ducit ad finem rectum, et quæ non ?

[Cap. xxii.] An fortitudo sit virtus cardinalis ?

[Cap. xxiii.] Vnde et qualiter quatuor principales virtutes dicantur morales ?

Quid sit virtus ?

[Cap. xxiv.] De triplici specie boni, et qualiter quatuor cardinales virtutes eliciantur a bono ?

[Capp. xxv, xxvi.] Quomodo et qualiter in bello quis possit dici fortis ?

[Cap. xxvii.] Quis sit principalior actus fortitudinis ?

Quot generibus fortitudinis quis utatur in bello ?

[Cap. xxviii.] An fortis in bello potius debeat mortem expectare quam fugere ?

[Cap. xxix.] An miles unacum comitiva sua viriliter in hostes prorumpens, et ipsos totaliter confringens, contra mandatum ducis, sit capite puniendus ?

[Cap. xxx.] An duci belli capto ab hostibus sit venia concedenda ?

Quartus tractatus tertii principalis, et dividitur in duas sui principales partes.

[Cap. xxxi.] *Prima pars, scilicet, qui teneantur ad bellum accedere ?*

An a domino, moto iusto bello, teneantur vassalli ad bellum accedere propriis expensis ?

[Cap. xxxii.] An subditi uni baroni moventi guerram contra regem suum, teneantur iuvare ipsum baronem contra regem ?

An subditi uni baroni, moventi guerram alteri baroni, teneantur ipsum [Cap. xxxiii.] primo, vel regem, moventem guerram alteri regi, iuvare utriusque mandato uno concursu recepto ?

An vassallus non legius duorum dominorum, utrumque vel alterum, et [Cap. xxxiv.] quem, iuvare teneatur ?

An vassallus teneatur iuvare dominum contra patrem, vel pater contra [Cap. xxxv.] filium ?

An civis duarum civitatum teneatur iuvare unam contra aliam ?

An vassallus vocatus a domino teneatur ipsum sequi in partibus ultra- [Cap. xxxvi.] marinis, ad pugnandum contra barbaros ?

An servi teneantur ubique sequi dominum ad bellum ? [Cap. xxxvii.]

An liberti, vocati, teneantur sequi patronum ad bellum ? [Cap. xxxviii.]

An agricolæ, vocati, teneantur sequi dominum ad bellum ? [Cap. xxxix.]

An confœderatos, seu colligatos, possit dominus provocare ut ipsum [Cap. xli.] iuvent in bello ?

An subditi, ratione iurisdictionis tantum, teneantur ad bellum accedere ? [Cap. xlii.]

Secunda pars, scilicet, de personis non astrictis ad bellum libere accedentibus, et dividitur in sex principales partes. [Cap. xliii.]

Prima pars, scilicet, de libere accedentibus.

An libere accedentes obligent sibi illum in cuius servitium vadunt, si damnum inde patiantur ?

An commodatarius teneatur commodanti equos et arma in bello deper- [Cap. xliii.] dita resarcire.

An conductor teneatur locatori equos et arma in bello deperdita re- [Cap. xliii.] sarcire ?

An provocans contra spoliatores provocati, ad bellum accedentis, aget [Cap. xliii.] vi bonorum raptorum, vel furti ?

An non vocati, sed proprio motu accedentes, ad bellum obligent sibi [Cap. xliii.] illum in cuius servitium vadunt ?

An non vocati, sed proprio motu ad bellum accedentes, et utiliter profi- [Cap. xliii.] cientes, obligent sibi illum renitentem et contradicentem in cuius servitium vadunt ?

Secunda pars de accedentibus, quia tenentur ad antidota. [Cap. xliii.]

An talis agat contra illum quem iuvat ?

Tertia pars de accedentibus propter gloriam consequendam. [Cap. xliii.]

An tales obligent sibi illum in cuius subsidium vadunt ?

Quarta pars de accedentibus, quia locant operas suas. [Cap. l.]

An tales agant contra conductores ?

[Cap. li.]

Quinta pars de accedentibus animo spoliandi.

An talibus actio competat ?

[Cap. lii.]

Sexta pars.

An clerici ad bellum accedere possint ?

An stipendiarii in Alania, constituto salario per conducentem, agant contra eum, qui dum venirent, amisit totaliter statum suum ?

[Cap. liii.]

An stipendiarii assumpti de Alania per civitatem Italicam, constituto salario per annum, qui dum venirent, civitas violenter occupata est per tyrannum, agant ad salarium in totum, aut pro rata, vel ad quid ?

[Cap. liii.]

An quando solvi debeat stipendiariis, an, scilicet, in principio cuiuslibet mensis, an in fine ?

[Cap. liii.]

An stipendiarii se absentantes, etiam de licentia domini, aliquo tempore, perdant salarium pro illo tempore ?

[Cap. liii.]

An si stipendiarii culpa sua servire nolint toto tempore firmæ suæ, perdant stipendium totius temporis, an tantum pro tempore quo non servierint ?

[Cap. liii.]

An stipendiarius servire possit per substitutum ?

[Cap. liii.]

An stipendiarius perdat stipendium tempore quo infirmatur ?

[Cap. lix.]

Quintus tractatus tertii principalis, scilicet, de spoliis et capturis quæ fiunt in bello.

An aliquid capiens in bello efficiatur dominus personæ captæ et rei, et an sit locus postliminio ?

[Cap. lx.]

An capti in bello duarum civitatum efficiantur servi, et dominium eorum quærat ?

[Cap. lxi.]

An capta in bello efficiantur capientium ?

[Cap. lxii.]

An in bellis licitum sit insidiis uti ?

[Cap. lxiii.]

(Desunt hic verba "an in festis licitum sit bellare ?".)

[Cap. lxiv.]

An consecutus in bello totum suum interesse, possit iterum adversarium in iudicio convenire, vel bellum iterato contra eum indicare ?

[Cap. lxv.]

An morientes in bello salventur ?

[Cap. lxvi.]

An pro rebus et possessionibus Ecclesiæ corporali bello bellare liceat, et super hoc milites convocare ?

[Cap. lxvii.]

An liceat episcopis ad bellum accedere sine licentia Papæ ?

[Cap. lxviii.]

An prælatis pro temporalibus, quæ tenent ab Imperatore, teneantur solvere tributum pro bellis ab eo indictis ?

[Cap. lxix.]

An captis in bello iusto sit miserendum ?

[Cap. lxx.]

An Ecclesia bellum debeat indicare Iudæis ?

[Cap. lxxi.]

An degentes in bello, qui pugnare non possunt, gaudeant immunitatibus bellantium ?

[Cap. lxxii.]

An liceat prælatis ratione temporalis iurisdictionis bella indicare, et eis interesse, et ad bellandum alios hortari ?

An liceat prælato, pro iniuria subditi sui impunita, bellum indicere, et [Cap. lxxiii.]
alios quam iniuriantes capere?

An delegatus Papæ possit indicere bellum, id est, invocare brachium [Cap. lxxiv.]
sæculare?

An bella indicta per Ecclesiam contra excommunicatos sint meritoria? [Cap. lxxv.]

*Sextus et ultimus tractatus tertii principalis per modum tabulæ, scilicet, quot [Cap. lxxvi.]
sint genera bellorum corporalium de quibus reperitur in iure expressum?*

*Quartus tractatus tertii principalis, scilicet, De Bello Particulari quod fit ob [Cap. lxxvii.]
tutelam sui, et dividitur in octo sui partes principales.*

Prima pars.

Quid sit particulare bellum? [Cap. lxxviii.]

Secunda pars.

Quot sint species particularis belli? [Cap. lxxix.]

Tertia pars.

Quo iure inductum sit particulare bellum? [Cap. lxxx.]

Quarta pars,

scilicet, Quibus liceat hoc particulare bellum indicere? [Cap. lxxxi.]

An clericis competat hoc bellum indicere? [Cap. lxxxii.]

An cum liceat clerico se defendere, etiam occidendo, hoc sibi liceat in [Cap. lxxxiii.]
ecclesia?

An liceat clerico celebranti invaso se defendere et occidere, et si sic con- [Cap. lxxxiv.]
tinuato officio celebrare?

An baptizanti, inungenti, confirmanti, ordinanti, et singula sacramenta [Cap. lxxxv.]
conferenti invasis, licitum sit collationem illorum postponere inchoatam?

An præeligenda sit mors^o invasi sacerdotis, cum puerum in mortis articulo [Cap. lxxxvi.]
baptizat, an vita æterna ipsius pueri, ne sine baptismo decedat?

An monacho liceat se defendere sine licentia abbatis sui? [Cap. lxxxvii.]

An servo liceat se defendere sine iussu domini sui? [Cap. lxxxviii.]

An bannitis, qui quandoque per leges municipales occidi impune possunt, [Cap. lxxxviii.]
liceat se defendere?

[Cap. lxxix.]

*Quinta pars,**scilicet*, Contra quos liceat hoc particulare bellum indicere ?

An liceat contra superiorem suum ?

[Cap. xc.]

An contra iudicem, etiam si iniuste aliquid agat ?

[Cap. xci.]

An filio contra patrem ?

[Cap. xcii.]

An monacho contra abbatem ?

[Cap. xciii.]

An servo contra dominum ?

[Cap. xciv.]

*Sexta pars,**scilicet*, Pro quibus liceat hoc particulare bellum indicere,*et dividitur in duas sui partes principales.**Prima pars, scilicet, pro quibus personis liceat ?*

[Cap. xcv.]

An liceat patri pro filio ?

[Cap. xcvi.]

An marito pro uxore ?

[Cap. xcvi.]

An pro fratre, sorore, et aliis coniunctis personis ?

[Cap. xcvi.]

An quis teneatur quem defendere ne ab alio occidatur ?

[Cap. xcix.]

An vassallus teneatur iuvare dominum suum ?

[Cap. c.]

An servus teneatur defendere dominum suum ?

[Cap. ci.]

An miles teneatur defendere præpositum suum ?

[Cap. cii.]

An vassallus videns dominum invasum ex una parte, patrem ex alia, utrumque pariter in mortis articulo nisi iuventur, nec iuvare potest nisi alterum, quæritur quem iuvabit ?

[Cap. ciii.]

Quid iuris, eodem themate retento, in clerico, qui videns episcopum suum invasum ex una parte, patrem ex alia, utrumque pariter in mortis articulo nisi iuventur, nec iuvare potest nisi alterum, quæritur quem iuvabit ?

[Cap. civ.]

Secunda pars, scilicet, pro quibus rebus liceat ?

An liceat pro rebus iuste possessis ?

[Cap. cv.]

An pro iniuste possessis ?

[Cap. cvi.]

An et si liceat res defendere, defendens etiam cum moderamine inculpatae tutelæ, si occidat vel mutilet, irregularitatem incurrat ?

[Cap. cvii.]

An, pro rebus suis defendendis contra clericum, excommunicationem incidat manus iniciendo ?

[Cap. cviii.]

An pro rebus defendendis vocatis amicis licitum sit subsidium impendere ?

[Cap. cix.]

An pro rebus defendendis licitum sit sic contra omnes vim vi repellere, sicut contra quos licitum est pro personis ?

[Cap. cx.]

An pro rebus depositis vel commodatis liceat vim vi repellere ?

Septima pars,

[Cap. cxi.]

scilicet, Qualiter liceat hoc particulare bellum indicere ?

An liceat cum moderamine inculpatae tutelæ ?

Quid sit moderamen inculpatae tutelæ, et quæ in eo requirantur ?

An liceat vili et debili cum ense se defendere contra fortem et robustum [Cap. cxii.]
pugno tantum percutientem ?

An et si liceat incontinenti se defendere, qualiter intelligatur illud [Cap. cxiii.]
“ incontinenti ” ?

Qualiter intelligatur æquivalentia in ipso actu violento ? [Cap. cxiv.]

An vindicasse videar, non defendisse, si spoliatores meos de possessione mea expuli, qui ante satisfacere volebat de possessione restituenda. [Cap. cxv.]

An paratum ad me percutiendum expectare debeam, vel eum prævenire ? [Cap. cxvi.]

An miles quem vicinus aggreditur censeatur vim vi repellere, si expectet et percutiat, cum tamen alias fugere posset ? [Cap. cxvii.]

An si vulneratus post vulnera insequatur vulnerantem, et ipsum percutiat, quod tamen non licet, puniri debeat ut dolosus, vel ut culpabilis ? [Cap. cxviii.]

An violentia illata personæ possit per amicos propulsari sicut illata rebus ? [Cap. cxix.]

An serviens, de mandato domini sui, uxorem ipsius interficiens, excusetur ? [Cap. cxx.]

Octava et ultima pars quarti tractatus tertii principalis.

[Cap. cxxi.]

Quis sit finis particularis belli ?

Quintus tractatus tertii principalis,

[Cap. cxxii.]

scilicet, De Particulari Bello quod fit ad defensam mystici corporis, quod
“ Represaliæ ” nuncupatur,

et dividitur iste tractatus, prima sui divisione, in duas partes principales.

Prima pars ponit unde, et a quo, ortum habuerunt represaliæ ?

[Cap. cxxiii.]

Secunda pars, scilicet, de causis represaliarum. De causa productiva sive efficiente represaliarum.

[Cap. cxxiv.]

Tertia pars, scilicet, de causa materiali, et dividitur in quatuor partes principales.

[Cap. cxxv.]

Prima pars, scilicet, de materia in qua.

Quid sit materia in qua ?

Quid sit materia circa quam ?

Quid sit materia contra quam ?

Quid sit materia ex qua ?

Quibus personis concedatur facultas represaliandi ?

An incolis represaliæ concedantur ?

An civibus non subiectis iurisdictioni civitatis, et alias non facientibus factiones, sint indicendæ represaliæ ? [Cap. cxxvi.]

[Cap. cxxvii.] An civi per conventionem concedantur represaliæ contra civitatem originis ?

[Cap. cxxviii.] An civibus, et habitis pro civibus, limitatæ tamen, represaliæ concedantur ?

[Cap. cxxix.] An civibus unius civitatis, qui pacto vel statuto tractantur ut cives alterius civitatis, per eandem concedi possint represaliæ ?

[Cap. cxxx.] *Secunda pars, scilicet, de materia circa quam.*

An contra res eorum qui capi non possunt vigore represaliarum possint indici represaliæ ?

[Cap. cxxxi.] An represaliæ, simpliciter indictæ, exerceri possint contra bona existentia in territorio civitatis contra quam sunt indictæ, ut capiantur et reducantur intra territorium civitatis indicentis ?

[Cap. cxxxii.] An si una civitas indicat represalias contra aliam, possit rector civitatis indicentis, scribendo rectori civitatis contra quam, exercere represalias in res ibi situatas ?

[Cap. cxxxiii.] *Tertia pars, scilicet, de materia contra quam.*

An represaliæ indictæ per unam civitatem contra homines alterius civitatis, exerceri possint contra incolas illius civitatis ?

[Cap. cxxxiv.] An represaliæ, indictæ per unam civitatem contra homines alterius civitatis, exerceri possint contra homines illius civitatis alibi morantes ?

[Cap. cxxxv.] An represaliæ exerceri possint contra cives vel incolas unius civitatis, onera subeuntes eiusdem, qui etiam sint cives alterius civitatis ?

[Cap. cxxxvi.] An contra mulieres exerceri possint represaliæ ?

[Cap. cxxxvii.] An contra clericos non coniugatos, item et an contra coniugatos, exerceri valeant represaliæ ?

An episcopo, negligente de clericis suis iustitiam facere, nec haberi possit recursus ad superiorem, possint indici represaliæ contra clericos eosdem per iudicem sæcularem ?

[Cap. cxxxviii.] An contra Bononienses, vel etiam alios studentes Bononiæ, euntes Paduam pro studio, exerceri possint represaliæ ?

[Cap. cxxxix.] An contra ambasciatores exerceri possint represaliæ ?

[Cap. cxl.] An contra euntes ad nundinas, ad Sanctum Iacobum, vel ad alium locum indulgentiæ, item an contra navigantes, et an contra illos qui in ius vocari non possunt, et in multis aliis casibus, exerceri valeant represaliæ ?

[Cap. cxli.] An contra Bononiensem potestatem, Mediolani ibi iniustitiam facientem, possint represaliæ concedi ?

[Cap. cxlii.] An contra officiales potestatis vel rectoris, iniustitiam facientes, possint represaliæ indici ?

[Cap. cxliii.] An contra consules, priores, civitatis, iustitiam facere denegantes, possint indici represaliæ ?

[Cap. cxliv.] An contra singulares personas, penitus innocentes, propter delictum domini, vel alterius privati, de quo non fit iustitia, indici possint represaliæ ?

An contra homines, quoad quid tantum, non autem plene, uni civitati subditos, indici possint represaliæ ? [Cap. cxlv.]

An contra certum genus hominum, facere iustitiam denegantium, indici possint represaliæ ? [Cap. cxlvi.]

Quarta pars, scilicet, de materia ex qua, quæ insurgit ex defectu iurisdictionis, quia primo requiri debet iudex antequam represaliæ concedantur. [Cap. cxlvii.]

An requiri debeat iudex ut iustitiam faciat antequam represaliæ concedantur ? [Cap. cxlviii.]

An iudex iniuriam patientis, qui non audet litigare in civitate iniuriam inferentis, possit scribere, ut in alios iurisdictionem prorogent, vel arbitros eligant ? [Cap. cxlix.]

Quis iudex requiri debeat ut iustitiam faciat ? [Cap. cli.]

Qualis iniustitia requiratur, ut represaliæ indicantur ? [Cap. clii.]

Quando dicatur non posse haberi copia superioris, ut locus sit represaliarum indictioni ? [Cap. cliii.]

Quarta pars principalis, scilicet, de causa formali, et dividitur in duas partes principales. [Cap. cliiii.]

Prima pars, scilicet, de forma indicendarum represaliarum.

Quis comparere possit ad hoc, ne indicantur represaliæ ? [Cap. cliv.]

Qualiter constabit de iniustitia facta, vel ea denegata ? [Cap. clv, clvi.]

An si aliqua capiantur vigore represaliarum, detineri valeant, ex primo decreto, an secundo ? [Cap. clvii.]

Secunda pars, scilicet, de forma exercendi represalias. [Cap. clviii.]

An liceat illi cui sunt concessæ represaliæ, auctoritate propria, vel per ministros concedentis, exerceri ?

An personas et res captas teneatur capiens iudici præsentare, vel sibi retinere ? [Cap. clix.]

An res captæ vigore represaliarum vendantur, vel in solutum accipiantur, vel æstimentur ? [Cap. clx.]

An diebus feriatis possint represaliæ exerceri ? [Cap. clxi.]

An, si quis vult se defendere, vel res captas, qualis cognitio adhibeatur ? [Cap. clxii.]

An exacto competat regressus, contra illum propter cuius debitum vel delictum exactus est ? [Cap. clxiii.]

An exacto succurratur contra rectorem sicut contra debitorem principalem ? [Cap. clxiv.]

An captus vigore represaliarum possit, auctoritate propria, homines illius civitatis capere in qua captus fuit ? [Cap. clxv.]

An per statuta represaliæ concedi possint in casibus aliter a iure non permissis ? [Cap. clxvi.]

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An statutum civitatis quo cavetur quod filius teneatur pro patre delinquente possit exerceri contra filium existentem extra territorium civitatis condentis ?

[Cap. clxvii.] An per pactum possit licite fieri quod unus teneatur pro alio ?

[Cap. clxviii.] *Sextus et ultimus tractatus tertii principalis huius operis, scilicet, De Particulari Bello quod fit ad purgationem, quod " Duellum " nuncupatur, et dividitur, prima sui divisione, in septem partes principales.*

Prima pars.

[Cap. clxix.] Quid sit Duellum ?

[Cap. clxx.] *Secunda pars, scilicet, quot sint species Duelli ?*

Qualiter duellum fit propter odii exaggerationem ?

Qualiter fit duellum propter gloriam in publico consequendam ?

Qualiter fit duellum propter purgationem alicuius criminis iniuncti ?

[Cap. clxxi.] *Tertia pars, scilicet, quo iure sit inductum et quo inhibitum ?*

Qualiter duellum, quod fit propter odii exaggerationem sit inductum iure naturali, sumpto pro instinctu naturæ, proveniente ex sensualitate ad aliquid appetendum ?

[Cap. clxxii.] Qualiter duellum, quod fit propter odii exaggerationem, sit inhibitum iure naturali, sumpto pro rationabili intelligentia, et sic iure gentium et divino, canonico et civili ?

[Cap. clxxiii.] Qualiter duellum, quod fit propter gloriam, sit inductum iure naturali, sumpto pro instinctu naturæ ex sensualitate proveniente ?

[Cap. clxxiv.] Qualiter duellum, quod fit propter gloriam, sit inhibitum iure divino ?

Qualiter duellum, quod fit propter gloriam, sit inhibitum iure gentium ?

Qualiter duellum, quod fit propter gloriam, sit inhibitum de iure canonico et civili ?

[Cap. clxxv.] *Quarta pars, scilicet propter quid duellum purgatorium sit permissum, et propter quid prohibitum ?*

Qualiter duellum purgatorium inhibitum sit iure divino ?

Qualiter duellum purgatorium inhibitum sit iure gentium ?

Qualiter duellum purgatorium inhibitum sit iure canonico ?

Qualiter duellum purgatorium sit inhibitum regulariter iure civili ?

[Cap. clxxvi.] *Quinta pars, scilicet, in quibus casibus permittatur duellum purgatorium ?*

Qualiter duellum iure Lombardo in viginti casibus permittatur ?

[Cap. clxxvii.] *Sexta pars, scilicet, inter quos iniri possit duellum ?*

Qualiter duellum purgatorium inter principales regulariter fieri debeat ?

Septima et ultima pars, scilicet, qualiter fiat duellum.

[Cap. clxxviii.]

Qualiter duellum purgatorium ad instar sit iudicii contentiosi ?

An iuramentum de astu inter duellantes sit præstandum, et per quem ? [Cap. clxxix.]

An uni parti campione dato, in casibus a iure permissis, liceat etiam alteri parti dare campionem ? [Cap. clxxx.]

Qualiter, in casibus hinc inde, cum campio conceditur, fiet ipsorum datio et concessio ? [Cap. clxxxi.]

An quilibet admittatur pro campione ? [Cap. clxxxii.]

In cuius electione sit duellum ? [Cap. clxxxiii.]

Qualiter ordinetur duellum ? [Cap. clxxxiv.]

Quibus armis duellari debeat ? [Cap. clxxxv.]

An, si arma seu fustes unius duellantium frangantur, vel cadant, debeant alia dari ? [Cap. clxxxvi.]

Quis duellantium prius percurrere debeat ? [Cap. clxxxvii.]

An duellum, prima die non finitum, sequenti die terminari possit ? [Cap. clxxxviii.]

An in duello succumbens in expensis condemnetur ? [Cap. clxxxix.]

An provocans in duello, succumbens, puniatur poena talionis ? [Cap. cxc.]

An provocatus ad duellum propter crimen, succumbens et condemnatus, possit de eodem crimine accusari in iudicio contentioso ? [Cap. cxci.]

An provocans ad duellum propter crimen publicum, desistens a duello, incidat poenam Turpiliani ? [Cap. cxcii.]

An provocans ad duellum iure Lombardo possit de iudicis licentia desistere ? [Cap. cxciii.]

An provocans ad duellum possit, sine poena, ante litem contestatam desistere, item an, et quando, in duello dicatur lis contestari ? [Cap. cxciv.]

Explicit Tabula super libello tractatus De Bello Domini Iohannis
de Lignano. Deo gratias. Amen. Amen. Amen.

THE TRACTATUS DE BELLO
Of Giovanni da Legnano

Translated from the preceding extended text
by

James Leslie Brierly, M.A., B.C.L.

Fellow of Trinity College and
Late Fellow of All Souls College, Oxford
Of Lincoln's Inn, Barrister-at-Law

HERE BEGINS THE TREATISE ON WAR OF GIOVANNI DA LEGNANO
OF MILAN, DOCTOR OF THE CANON AND OF THE CIVIL LAW.

"The King of Israel changed his raiment and entered into war," 1 Kings, ch. xxii. Israel is the throne of the Lord, and, as it is written in Jeremiah, ch. iii, "they shall call Israel the throne of the Lord." And this is the patrimony of the Holy Roman Church, whose head is Jerusalem, this kindly city of Bologna, which may truly be called Jerusalem. For in her is manifested the truth of all things knowable, and especially of law. Of her it is written in Zechariah, ch. viii, "Jerusalem shall be called a city of truth." She is "comely as Jerusalem," Song of Solomon, ch. vi. Of her also the Prophet exclaims in Zephaniah, ch. i, "I will search Jerusalem with candles"; and in Acts, ch. v, "ye have filled Jerusalem with your doctrine." Of her also it is written in Revelation, ch. xxi, "I saw the holy city, Jerusalem"; and in the same chapter, "he shewed me the city, the holy Jerusalem, descending out of heaven," to wit, Bologna. And truly she has descended out of heaven, since there is the fountain of truth, of the laws which indeed are promulgated by the mouths of princes, dist. viii, *quo iure*; C. De longi temporis præscriptione, the last law. Of her the Apostle writes to the Hebrews, in ch. xii, "the city of the living God, the heavenly Jerusalem." And the same Apostle, in Galatians, ch. iv, says, "But Jerusalem which is above is free." Of her also it is written in 2 Chronicles, ch. vi, "I have chosen Jerusalem, that my name might be there."

But with the permission of the Most High and by the disposition of the heavenly bodies, this city of Bologna, like Jerusalem, has been utterly changed and devastated, and for the innumerable offences of her inhabitants, and their mutual hatreds, the Most High has long threatened her destruction, as it is written in 2 Kings, ch. xxi, "I will wipe Jerusalem as a man wipeth a dish." Of the conspiracy of the inhabitants it is written in 2 Chronicles, ch. xxv,* "a conspiracy descended on Jerusalem." And because of the pride of the inhabitants the Lord threatened by the mouth of his Prophet, saying, "I will mar the pride of Judah and the great pride of Jerusalem," Jeremiah, ch. xiii. And because of this pride the Prophet exclaims against her inhabitants, saying, "I will make Jerusalem heaps of sand." And in another place a Prophet exclaims because of this, saying, "I will make Jerusalem as an heap of stones," Micah, ch. i. And because of this a Prophet exclaims against those that were nursed in her, saying, "ye grieved Jerusalem, that nursed you," Baruch, ch. iv.

* At the end, "they made a conspiracy against him in Jerusalem."

And because of this, that is, because of the excesses of the inhabitants, it came to pass that the armies of the King of Babylon besieged Jerusalem, Jeremiah, ch. xxii. And because of this, that which is written in Ezekiel, ch. v, came to pass, "This is Jerusalem in the midst of the nations," that is, in the midst of her enemies. By way of penalty there has come to pass also that which is written in Lamentations, ch. i, "Jerusalem has become as a woman defiled."

Therefore the kindly city of Bologna is rightly called Jerusalem, and the head of the throne, that is of the patrimony, of the Holy Mother Church. But the king who in fact rules and governs her is the Most Reverend Father and lord in Christ, the lord Egidio, by divine compassion Bishop of Sabina. For he changed his raiment and entered into war. For he was appointed from the throne of peace, that is, from the most sacred College of Cardinals, and from the right hand of the most holy Pope Innocent VI, for the recovery of Jerusalem, that is, of the patrimony which had been utterly lost; and in its recovery he changed his raiment. For he left the pontifical peace and entered into war, into strong war like a most serene prince. For before him there was no king in Jerusalem; as it is written in Judges, ch. xxi, "in those days there was no king." And for that reason the Lord said to him, that is, to the lord Egidio, "I have sent thee to rule over the people of the Lord," Judges, ch. ixth. And he himself may say, "the Lord chose me to be king," 1 Chronicles, ch. xxviii. "And the Lord set him as king over all Israel," 1 Chronicles, ch. xii'. And "the king arose from the throne of the Lord," Jonah, ch. iii. And he entered into war well and prosperously. For like one borne on the two wings of highest wisdom and illustrious bravery, he brought all the rights of the Holy Roman Church, which had been tyrannically usurped, from nothingness into existence, from darkness to light, so that it may be said that he has created something out of nothing, Genesis, ch. i; and C. De rei uxoriæ actione, the single law, at the beginning. Truly, therefore, like the King of Israel, he has changed his raiment and entered into war.

Because, therefore, the King of Israel, that is of the patrimony, and above all of the city of Bologna, which is indeed the head of the patrimony, and which, as was shown above, was brought from extremity to extremity, changed his raiment and entered into war, and this war is in our own days, and is even still pending, it would seem somewhat unfitting to pass it over in complete silence.

So therefore I, Giovanni da Legnano of Milan, the least of all doctors of the canon and civil law, have conceived a treatise to be dedicated to you, the Most Reverend Father in Christ and my lord Egidio, by divine compassion Bishop of Sabina in the parts of Italy, Vicar General for the Holy Roman Church, and true King of Jerusalem, concerning Jerusalem, that is, the city of Bologna, and concerning the war into which, changing your raiment, you entered, in the following order. I shall set forth six cases touching the city of Bologna, which have keenly concerned that city, from the year of our Lord 1350 up to 1360, especially those wherefrom a change of government arose,

together with the marks of the seasons and the aspects of the years about noon-time of the days on which these things befell, but not the aspects of the hours. And I add these things because I intend in some treatises to exceed the bounds of law, explaining some things which will perchance happen ; and to each case I shall devote one treatise or more, as occasion demands. Some treatises I shall pass over in silence, others I shall explain in detail. I shall publish one only at the present time, a treatise on War, promising, if the Lord will, to expand and deliver them severally at a fitting time, and when the cause of the prohibition ceases, and praying the same Most Reverend Father to deign to overlook the poverty of my intellect, and to accept this poor exordium, to be corrected and reformed as it shall please you, according to the authority of the Wise Man of the Gentiles, "a poor gift," &c. I pass, then, to my subjects ; and I shall set them forth from the cause in a figure.

While Jupiter the key-bearer, the Sixth bearer of clemency,² was sitting on the seat of the fisherman, Mars³ by his command hastily approached, that he might freely enter into the green and flowery pasture⁴ of Taurus. This was in the year of our Lord 1350, on the 8th day of July. The Sun was then in Cancer, 23° 32' ; the Moon was with Leo, 28° 21' ; the Head of Draco was in Gemini, 26° 9' ; Saturn was in Aries, 26° 32' ; Jupiter with Cancer, 28° 51' ; Mars in Libra, 11° 18' ; Venus was retiring in Cancer, 29° 20' ; Mercury was following Venus in Cancer, 9° 10'. And then the tallest of the sons of Saturn,⁵ bearing a circlet⁶ from Jupiter,⁷ full of vipers within, with three tall vipers⁸ springing from his sides, descending from the north on the intercession of Mercury,⁹ came with Mars into the pasture, and was chosen perpetual shepherd of the Taurine herd, that is to say, was elected lord. And this was in the year of our Lord 1350, on the 24th day of October, the Sun . . . ; the Moon in Cancer, 9° 50' ; Saturn in Aries, 22° 19' ; Jupiter in Leo, 18° 13' ; Mars in Sagittarius, 23° 32' ; Venus in Virgo, 25° 20' ; Mercury in Libra, 21° 25' ; the Head of Draco in Gemini, 20° 19' ; his Tail, &c.

After a lapse of time, by the working of the clemency¹⁰ of Jupiter, and of the circlet¹¹ which the son of Saturn had received from him, it came to pass that the son of Saturn received¹² Jupiter in the meadow with words, and recognized him as the first shepherd of the herd. This was in the year of our Lord 1352, on the 7th day of September ; the Sun in Virgo, 23° 10' ; the Moon in Virgo, 2° 30' ; the Head in Taurus, 14° 17' ; Saturn in Taurus, 24° 27' ; Jupiter

² i. e., in the reign of Pope Clement VI.

³ i. e., the army of the Count of the Romagna for the Church.

⁴ i. e., Bologna.

⁵ i. e., the Archbishop of Milan.

⁶ i. e., the priestly dignity.

⁷ i. e., the Pope.

⁸ i. e., his three nephews, Matteo, Bernabo, and Galeazzo.

⁹ i. e., Giovanni da Pepoli.

¹⁰ i. e., Pope Clement.

¹¹ i. e., the priestly dignity.

¹² i. e., the Archbishop recognized the Pope as lord.

in Virgo, $29^{\circ} 17'$; Mars in Sagittarius, $6^{\circ} 20'$; Venus in Virgo, $2^{\circ} 8'$; Mercury in Libra, $27^{\circ} \dots'$.

Now, behold, in this short time Taurus contracted a triple wedlock, and blushed not, his spouse still living, to break forth into illicit desire now for this and now for that one, so that there may be said of you that which is written in Isaiah, ch. i, " How is the faithful city full of judgement become an harlot ! Righteousness lodged in it, but now murderers. Thy silver is become dross, thy wine mixed with water. Thy princes are rebellious, and companions of thieves. Every one loveth gifts, and followeth after rewards. They judge not the fatherless, neither doth the cause of the widow come unto them. Therefore saith the Lord, the Lord of hosts, the mighty One of Israel, Ah, I will ease me of mine adversaries, and avenge me of mine enemies ; and I will turn my hand upon thee, and purely purge away thy dross, and take away all thy tin ; and I will restore thy judges as at the first, and thy counsellors as at the beginning : afterward thou shalt be called the city of righteousness." So it happens and will happen concerning thee, O Taurus, when the semicircle shall become tripartite, peace arise, and motion flow ; age resists, but a youth of vices brings this to pass.

To this case I devote three treatises : one on Mars, that is on War, and this I publish ; another on Jupiter, that is on the Church, and its government by its pastors, and by the aspects mentioned, showing what is the issue of its prosperity and adversity, and especially in regard to this present time, of the patrimony ; another on Saturn, that is on the Empire and its government by the rulers of to-day, and what is the issue of its prosperity and adversity, especially in regard to ecclesiastical and temporal rule in Italy, although in some ways these things pass the bounds of law. The last two, however, I do not publish at present, as I said before, until the urgent reason ceases.

Second Case.

After this, when the son of Saturn had been consumed with fire¹³ and the three vipers¹⁴ above mentioned had been raised up, bearing Saturn of the eagles¹⁵ also in the centre of their heart, and ascending the throne of him who had been consumed,¹⁶ they were received indivisibly as shepherds into the pasture.¹⁷ This was in the year of our Lord 1354, on the 11th day of October. At that time the Sun was in Libra, $26^{\circ} 22'$; the Moon . . . with Leo, $16^{\circ} 45'$; Draco was covering his Head in Aries, $3^{\circ} 58'$; Saturn was in Gemini, $23^{\circ} 24'$; Jupiter was in Libra, $22^{\circ} 17'$; Mars in Capricorn, $25^{\circ} 4'$; Venus was wantoning in Scorpio, $16^{\circ} 14'$; Mercury in Scorpio, $11^{\circ} 46'$; Draco was covering his Head in Taurus, $3^{\circ} 59'$.

¹³ i. e., the Archbishop being dead.

¹⁴ i. e., his nephews.

¹⁵ i. e., the imperial eagle.

¹⁶ i. e., succeeding the Archbishop.

¹⁷ i. e., as lords of Bologna.

After a little time, the lot was cast for the inheritance ¹⁸ of him who had been consumed with fire, and the elder of the vipers ¹⁹ was raised alone into the pasture. Here I give no mark, because I do not regard it as important for what follows. After this, Mercury,²⁰ fearing he might be utterly exterminated by the vipers, was taken within the pasture as a shepherd. See now how, in this short space of time, Taurus, raging in wantonness, blushed not to contract another triple wedlock. And because thou didst so rage in the wantonness of manifold concubinage, and therein didst exceed all wantonness that admits of expiation, the Lord rained upon thee brimstone and fire from the Lord out of heaven, and overthrew thee, and all the region over against thee and the inhabitants, and all the green things which grew upon the ground, as it is written in Genesis, ch. xix. When a straight line shall be semicircular, then that which is crooked shall be made straight for thee. Now this was in the year of our Lord 1355, on the 17th day of April. The Sun was in Taurus, 5° 7'; the Moon in Gemini, 28° 31'; the Head in Pisces, 23° 49'; Saturn in Gemini, 20° 17'; Jupiter in Sagittarius, 22° 15'; Mars in Gemini, 5° 21'; Venus in Taurus, 27° 19'; Mercury in Aries, 11° 22'.

To this second case I append treatises on temporal dominion throughout the world under the Empire, treating of its origin, its species, division, succession, mode of government, and conservation; explaining each single government, from the lowest to the highest, in the whole world, beyond the bounds of law; explaining how the governments of the world vary according to the variety of its climates, and how in the same climates the governments of the world vary with the varied motions and aspects of superior bodies, for sometimes they are tyrannies, sometimes democracies, sometimes natural principalities; using common and popular language, in order that in the prosecution of this treatise I may follow the subject to its farthest limits.

Third Case.

After this the elder viper ²¹ vanished, and Mercury ²² recognized the next ²³ in the pasture. This was in the year of our Lord 1355, on the 27th day of September; the Sun was leaping with Capra, 14° 46'; the Moon was being bitten by Scorpio, 23° 31'; the Head of Draco was in Pisces, 10° 19'; Saturn was with Cancer, 2° 45'; Jupiter was grazing with Capra, 7° 33'; Mars was bearing the bite of Scorpio, 21° 41'; Venus was with Capra, 1° 53'; Mercury was preceding Venus over Capra, 18° 55'. And now, behold, O shameless

¹⁸ i. e., the dominion of the Archbishop was divided.

¹⁹ i. e., the lord Matteo.

²⁰ i. e., Giovanni, lord of Olegio, fearing death.

²¹ i. e., the lord Matteo died.

²² i. e., the lord Giovanni del Olegio.

²³ i. e., the lord Bernabo.

Taurus, thou didst not blush at once to contract another new wedlock, but soon afterwards the spouse was given a bill of divorcement,²⁴ O. revolved to A. and returned with Mercury.²⁵ And this was in the year of our Lord 1356, on the 11th day of February; at which time the Sun was in Pisces, 7° 57'; the Moon was in Gemini, 17° 56'; the Head of Draco was filled with Pisces, 8° 9'; Saturn was withdrawing with Cancer, 0° 44'; Jupiter was leaping with Capra, 16° . . .'; Mars was bearing the Arrow, 18° 64'; Venus was sprinkling Aqua, 24° 58'; Mercury was in Pisces, 0° 38'. It seemed shameful for Taurus . . . two spouses at the same time. . . . It had been better for him to endure the two together . . . than to wander through so many illicit unions. And because thou didst so wander, there shall happen to thee that which is written, "the Lord shall bring a nation against thee from far, from the end of the earth, as swift as the eagle flieth; a nation whose tongue thou shalt not understand; a nation of fierce countenance, which shall not regard the person of the old, nor shew favour to the young: and he shall eat the fruit of thy cattle, and the fruit of thy land, until thou be destroyed: which also shall not leave thee either corn wine, or oil, or the increase of thy kine, or flocks of thy sheep." Thus spake the Lord to His disobedient people, as it is written in Deuteronomy, ch. xxviii. When four shall be resolved into three, then shall that which is fixed for thee become movable.

To this case I append treatises on the grant and recognition of temporal dominion, explaining the various modes according to the variety of dominions, and of those who grant and receive them.

Fourth Case.

After this, while the marriage of Mercury with Taurus²⁶ was subsisting, the flowers and greenness of the Taurine pasture, during the reign of Jupiter the key-bearer, the Sixth bearer of innocence, were utterly dried up;²⁷ and this was in the year of our Lord 1357, on the 12th day of April. The Sun was then with raging Taurus, 0° 46'; the Moon was pouring Aquæ, 5° 29'; Draco was covering his Head under the wave, 3° 38'; Saturn was with Cancer, 15° 16'; Jupiter was swimming in Aquæ, 26° 23'; Mars was in Gemini, 15° 14'; Venus was playing with Pisces, 21° 20'; Mercury was with Taurus, 11° 32'. O shameless Taurus, this was the punishment for that old and rash divorce of thine from thy spouse, from her who, while the marriage with thee subsisted, increased thy dowry, raising thee on sharp horns for a space of more than four

²⁴ i. e., the lord Bernabo was driven out.

²⁵ i. e., the lord Giovanni del Olegio reassumed the sole dominion.

²⁶ i. e., while the lord Giovanni del Olegio was in power.

²⁷ i. e., an interdict on divine services and a suspension of studies in the city of Bologna were declared.

years, and setting thee on the broadest throne from the north towards the meridian. But thou in impatient rage didst divorce thy spouse and fall with broken horns. And because thou wast so lifted up, the Lord said unto thee, O Taurus, "because thine heart is lifted up, like the heart of a god, therefore I will bring strangers upon thee, the terrible of the nations: and they shall draw their swords against the beauty of thy wisdom, and they shall defile thy brightness, and they shall kill thee and drag thee down; and thou shalt die the deaths of them that are slain in the midst of the seas. Wilt thou yet say before them that slay thee, I am God, when thou art a man and not God? By the hand of them that slay thee, by the hand of strangers, thou shalt die, for I have spoken it, saith the Lord." This is written in Ezekiel, ch. xxviii. When Job shall be healed by the horns of Taurus, that which is in the centre shall be turned to the concave of the sphere.

To this case I append a treatise on Ecclesiastical Censure, explaining its several kinds in separate treatises.

Fifth Case.

After this, while Mercury²⁸ was again browsing within the pasture of Taurus, the second viper²⁹ adopted by Saturn as a son,³⁰ hastily urged Mars with swift motion to enter the pasture of Taurus,³¹ . . . Finally, by Mercury's³² contrivance, the most high brother³³ of Jupiter, receiving the papal insignia from him, the imperial from Saturn, the warlike from Mars, pre-eminent above all the other "hinges" of the Church, forestalling swift Mars,³⁴ was received within the pasture;³⁵ and so the circle of the first case completed its revolution. . . . [*Here follow twenty-three lines of which the text is practically unintelligible.*] I see two foremost counsellors of heaven about to come to a grand conference. The conference will be held in a damp and poisonous place. There they will treat of the shaking of the world below. There they will treat . . . There they will treat of change in the government of the world. There they will treat of danger to the Church. There they will treat of the raising up of pestilences and famines. There they will treat of the shaking of the region of the sea. There they will treat of the changing of the prince of the world in his seat, of the making of a mighty commotion. But three lower counsellors in another anterior corner of the same house will converse together at the same time, and many things they will dispute and determine concerning the disposition of the world, and these conferences shall be in the year of our Lord 1365, in the

²⁸ i. e., the lord Giovanni del Olegio.

²⁹ i. e., the lord Bernabo.

³⁰ i. e., appointed imperial vicar.

³¹ i. e., sent a great army to seize the city.

³² i. e., the lord Giovanni del Olegio.

³³ i. e., Egidio Albornoz, the papal legate.

³⁴ i. e., the army of the lord Bernabo.

³⁵ i. e., was chosen lord of Bologna.

month of October. O Taurus, it behoves thee to be ready and prepared with thy horns, for the brightness of the world will be overshadowed in thy stall, and do not thou disregard it. And this shall be in the year 1361, on the 5th day of May. Of these things the planets treated in grand and multiform conference, of which I have spoken in my treatise. These things the various aspects of their revolutions bring to pass, and there is to be noted another wedlock of Taurus. For with the revolution of the years, on the month and day on which he turned aside by expelling O,³⁶ he has begun anew by receiving S.³⁷

O Taurus, proceeding with multiform motion, though it has been ordained that motion should end in rest, it is in thy heart that motion should end in motion, and ordinarily in worse. For thee the end of motion is the beginning of motion. For thee to be at rest is to be moved, and now, imitating the gentile Cato, who took again her whom he had divorced, and returning whence thou didst turn aside, thou wast trusting to reach the end of unrest. But still thou shalt be moved, until it please the Most High to fashion for thee a stable habit. The brother of Jupiter fully entered in the year of our Lord 1360, on the 1st day of April. The Sun was then with Aries, 19° 24'; the Moon was in Libra, 11° 21'; the Head of Draco was in Sagittarius, 17° 36'; Saturn was . . . with Leo, 25° 8'; Jupiter was with Taurus, 21° 18'; Mars was in Pisces, 6° 23'; Venus was going before Mars in Pisces, 10° 52'; Mercury was in Aries, 16° 10'.

To this I shall append the deeds of peace, when they shall have come to pass. And I shall compose a separate treatise on Peace. . . .

HERE BEGINS THE TREATISE ON WAR.

[Ch. i.]

In the treatise on War I shall proceed as follows :

First, I shall give a description of Human War, concerning which I shall principally treat, in genus.

Secondly, I shall divide War into heads.

Thirdly, I shall pursue the several heads.

What War is, and how it is to be described.

War is described thus : It is a contention arising by reason of something discordant offered to human desire, tending to exclude the discordancy.

I said "contention." This I give as the genus, for it contains in itself both warlike contention and all other contentions; ff. De aqua plu. arcenda, l. *si usque*, last section. I said "by reason of something discordant," and this is the cause whence any contention arises. I said "to human desire," to

³⁶ i. e., the legate of Ostia.

³⁷ i. e., the legate of Sabina.

differentiate it from a contention of brutes. I said "to exclude the discordancy," &c., and this is the final cause of any war; for any war tends finally to destroy the displeasure which introduced it, and so wars are made for the sake of peace; xxiii, q. i, *noli*.

Of the Division of War, and how it is to be divided.

[Ch. ii.]

Secondly, War is divided thus: It is either Spiritual or Corporeal.

Spiritual War is either Celestial or Human. Celestial Spiritual War is that referred to in Job, ch. xivth. Human is that of which it is written in the Epistle to the Romans, ch. vii, "I see another law warring against the law of my mind"; xxxii, q. v, *si Paulus*.

Corporeal War is either Universal or Particular. Universal War is referred to in ff. De captivis, throughout; xxiii, q. i, and q. ii.

Of Particular War one form is waged for the protection of one's own body and property, and this is referred to in ff. De iustit. et iure, l. *ut vim*; ff. De vi et vi ar., l. i, § *vim vi*; and ff. Ad legem Aquiliam, l. *scientiam*, § *qui cum aliter*; and C. De vi, l. i; and De restit. spol., ch. *olim*; and Clem., De homicidio, *si furiosus*.

Another is waged for the protection of a mystical body, or a part of it, on account of a defect of jurisdiction; this is called "Reprisals," and is referred to in Authentics, *ut non fiant pignorationes*; and Sext, De iniuriis.

Another is waged on account of the contumacy of one who resists the jurisdiction of a judge; ff. De rei vindicatione, l. *qui restituere*.

Another is waged for "compurgation"; this is called "Duel"; C. De gladiatoribus, the single law; and De pugnantibus in duello, the whole title.

It is true that our first division might be into "lawful" and "unlawful" war; but on these little need be said, and the several heads must be explained severally in their order.

And first of Celestial Spiritual War, explaining it very briefly, and so of each in turn.

Order of the Treatises.

I shall treat therefore of Celestial Spiritual War.

Secondly, of Human Spiritual War.

Thirdly, of Universal Corporeal War.

Fourthly, of Particular War for the protection of one's own body.

Fifthly, of Particular War for the defence of a mystical body, which is called "Reprisals."

Sixthly, of Particular War for "compurgation," which is called "Duel."

Of Celestial Spiritual War.

[Ch. iii.]

Returning to these subjects severally, I say that Celestial War arose because of ingratitude arising from a defect in the impress of charity stamped by the Creator on an intelligence the most sublime of all created intelligences. And with this the description given above does not agree. Here we must know, that, as Gregory says in the *Moralia*, in the beginning of the creation of the angelic nature the Most High Creator of all created Lucifer to be more eminent than the other angelic intelligences. For his pre-eminence was not lower than the cedars in the garden of God, as is written in Ezekiel, ch. xxxi, "the fir trees, the plane trees did not equal his strength, nor his branches"; for he is described as "made fair in the multitude of his thick branches," . . . He was the seal of the similitude of God. He was therefore created more eminent than the rest, as he had also other openings prepared for the admission of charity. For from his first creation he was made capable of charity; and had he but consented to be filled therewith, . . . but he chose not charity because of pride. For had he shown himself penetrable to the gold of charity, he would have remained among the holy angels, a cut stone in a royal diadem. He had then the openings, but because of the vice of pride they were not filled with the gold of charity. ✓

Inasmuch, therefore, as he was more eminent than the rest, as being created the seal of the similitude of God, and yet he would not be filled with charity because of the vice of pride, therefore he sinned and was condemned without pardon, because he was created great without comparison; therefore for this he was cast out from paradise, as may be seen at length and in most noble words in *De Pœnit.*, dist. ii, ch. *principium enim*. The passage is by Gregory, as I said above. This was the Celestial Spiritual War, upon which, as I said before, I shall say but little; yet as I said that Lucifer was more eminent than the rest, we must note that certain qualities were conferred on angels at their first creation, in common but in different degrees, and certain others in common but indifferently. Those which were conferred in common but in different degrees were subtlety of nature or substance, clearness of intelligence, ability of free will. Yet these qualities they have in different degrees; for some are more subtle than others in substance, some are clearer in intelligence, some are freer of will. The qualities conferred in common but indifferently were spirituality, indissolubility, indivisibility, immortality. In these all are made equal; and by this you will understand in what respects Lucifer was more eminent than the rest, because he was more eminent in the qualities that are conferred in common but in different degrees. hubers

We must note, too, that the Devil was exalted by natural prerogative, of which it has been said that he was exalted also because of the victory which he sometimes has against man in the war which he wages against him, whence it is written in a Psalm, "Thou hast exalted the right hand of them that oppress

him." David feared this victory when he said, " Lighten my eyes lest I sleep the sleep of death, lest mine enemy say, I have prevailed against him." He was exalted, too, because of pride, whence it was said to him, " Thine heart was lifted up because of thy beauty"; for he himself said, " I will ascend into heaven, and will set my throne to the north; and I will be like the Most High," Isaiah, ch. xiv.

How Celestial Spiritual War is the mete and measure of Human Spiritual War.

[Ch. iv.]

This, then, was the Spiritual War whereby Lucifer was cast out from the paradise of the Most High, and perhaps from it Human Spiritual War had its origin. For in every genus it is possible to arrive at one thing which is the first and the measure of all things within the common genus. So in the genus of the conflict of good against evil we may arrive at the first thing. The first thing is the beginnings; but the beginning of virtue is the Most High, and the beginning and the prince of vices is the Devil. Their conflict, then, is the first thing and the measure of any lower human spiritual conflict.

Of the natural influence of the Spiritual War of celestial bodies on terrestrial wars.

[Ch. v.]

Now it may be, if I may speak in terms of natural philosophy, that terrestrial corporeal wars have celestial wars corresponding to them; for, as the Philosopher says, this world is necessarily in contact with the higher motions, in order that all virtue may be directed thence; Metaphysics, i, and De Cœlo et Mundo, ii. Every lower corporeal act, therefore, is directed by celestial ones above, and there is a conflict above, that is to say, virtual opposition, springing from the diversity of the celestial bodies, and especially of the planets, whose influence is more all-pervading than that of the fixed stars, and from the diversity of the aspects, positions, and motions of the same. Perhaps if we observe these we shall see that the world could not well be without war. And perhaps it would not be wrong, according to the teachings of natural philosophers and astrologers, to hold that the world could not continue without war and with peace alone, which might clearly be shown as follows.

How, according to theologians and natural philosophers, it is necessary to assume the existence of war.

[Ch. vi.]

If the sufficient and necessary productive causes of any effect are established, the effect itself must necessarily be established; but the sufficient and necessarily productive causes of war are established, therefore war itself must

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✓ necessarily be established. The major premise is proved. For an effect follows its cause as regards being productive and destructive ; i, q. vii, *quod pro remedio* ; i, q. i, *quod pro necessitate* ; dist. lv, *priscis* ; dist. lxi, *neophitus* ; i, q. i, *detrahe* ; De baptis., *debitum*. The minor premise is proved. For according to the teaching of natural philosophers it is impossible for the heaven to stand still, Physics, vii and viii ; on the contrary its motion is perpetual, and the celestial bodies by their own nature work opposing effects upon these lower bodies, and this opposition of effects arises here below by reason of the variety of the aspects of the celestial bodies and their motions, as our sensations show us. For, to deduce the proposition strictly, by reason of the varied correspondence of the celestial bodies at the time of the construction of states, some states are found hating one another naturally, others are friendly or akin ; and so too there are men who hate one another naturally, not because of preceding deserts on one side or the other, and others who love one another naturally. Since, therefore, wars arise by reason of hatreds and discordances of desires, and these are necessarily produced by the motions of the celestial bodies, which are always and necessarily active, we infer that there will necessarily be wars, having regard to the necessity of material and corporeal nature. I admit, however, that natural power is not directly necessitated, and of itself might even resist. Hence the saying of Ptolemy in the Centiloquium, "the wise soul dominates the stars, . . . and we have praised him." I confess, however, that if the theologians think otherwise, I submit myself, in all that concerns them, to their correction.

Of this war, however, I do not intend to treat, because it would be to exceed the bounds of law too far.

✓ Now six theological causes, which prevent there being universal peace on the earth, are usually given. The first is because offences are not punished, Ecclesiasticus, ch. iv. The second is the abundance of temporal things, Genesis, ch. xiii, "there was a strife between the herdmen of Abraham and the herdmen of Lot" ; James, ch. [v] iv, "whence wars and disputes," &c. The third is because we are not occupied in the fight against the Devil, so that we do not fight like men, Isaiah, ch. xxviii, "we have made a covenant with death and with hell" ; Ephesians, ch. vi, "we wrestle not against flesh." The fourth is because we do not consider the losses of war, in which we lose life and body and riches, Jeremiah, ch. lvi^o. The fifth is because we do not weigh the issue of war, which is doubtful, 1 Samuel, ch. xii. The sixth is because we do not keep the precepts of God, Jeremiah, ch. iii^o, "would that thou hadst hearkened to my commands," &c.

We see, then, from what I have said, that celestial spiritual war is twofold. The first is the war of the Creator against Lucifer himself, springing from defect of charity turned into pride, drawing him down from his celestial throne to the centre of the earth. And this war lasted but a moment ; see Job, ch. xiv, above. The second is the virtual opposition of the motions and aspects of celestial bodies, which introduces formal opposition in these lower bodies, whereby the lower wars are introduced, and this is continuous and successive.

On the first, in terms of theology, depends Human Spiritual War, which proceeds from the opposition of intellect to sense. For the Prince of Evil persuades and induces to sin, that he may draw us down, Ephesians, ch. vi; but the Prince of Good, on the contrary, strives to raise us upwards. On the second depends Human Corporeal War, and even Human Spiritual War, to speak in the terms of natural philosophy, as will be discussed in the treatise next following.

Of Human Spiritual War, according to Theology.

[Ch. vii.]

Human spiritual war may be explained theologically and morally. Theologically it is a contention arising by reason of the envious opposition of the Devil against a reasonable creature, having its impetus in the sin of our first parent. And of this spiritual war the Apostle speaks in Ephesians, ch. vi, saying, "Take unto you the armour of God, that ye may be able to withstand the deceits of the Devil." And this armour is the virtues and good works wherewith men are armed against the vices; xi, q. iii, *qui resistit*. Now the deceits of the Devil are innumerable, for, as Pope John says, "he has a thousand ways of injuring, and we know his cunning. For from his first fall he tries to break the unity of the Church, to wound charity, to poison the sweetness of holy works with the gall of envy, and in all manner of ways to pervert and perturb the human race. For he is sorely troubled and shamed that men formed of clay should keep charity on earth, which he could not have in heaven. Hence ought we, so far as our frailty will allow, to fortify all approaches of injury against his cunning, lest death enter by our doors." These words are in xvi, q. ii, ch. *visis*. So in another place Jerome writes most beautifully to Jovinian in these words, "Thus in evils and sins are the inciting seeds and the working of the Devil. When he sees that we have built on the foundation of Christ hay, wood, and stubble, then he applies fire. Let us build therefore gold, silver, and precious stones, and he will not dare to attack; although even in this is no sure possession, for the lion lurks in ambush, that he may kill the innocent in the secret places, and the furnace proves the potter's vessels, but just men are proved by the temptation of tribulation." These words are taken from De Pœnit., dist. ii, ch. *si enim*, about the middle. In another place, too, Pope Alexander writes in these words: "For the Devil does not cease to go about seeking whom he may devour, and seeking whom of the faithful he may destroy, and especially those whom he finds more ardent in the service of the Saviour and devoted to Him." These words are taken from iii, q. i, *nulli*, and ch. *verum*, originally from 1 Peter, ch. v. And this war had its impetus in the sin of our first parent, not as a positive cause, but as a necessary one. For if our first parent had not sinned, this conflict would have come to naught.

Of Human Spiritual War, according to Moral Philosophy.

[Ch. viii.]

Now Human Spiritual War, if we understand it in a moral sense, and speak after the manner of philosophers, is a contention arising by reason of the opposition of reason to sensitive appetite. Here we must note that, according to the Philosopher, in *De Anima*, ii, the soul has five potentialities, vegetative, sensitive, appetitive, intellectual, and, according to place, motive. The appetitive is divided into sensitive and rational. The same Philosopher, in *Politics*, i, shows that the soul dominates the body with a rule disposed or ordered like that of a master over a slave. But the intellect dominates the sense with a royal rule, that is, a rule ordered over free persons ; that is to say, the soul dominates the body as a master his slave, but the intellect dominates the sense as a superior dominates one who is subject to him, though free. Further, we must observe that the intellect is called rational because it formally contains reason in itself ; but the sensitive appetite is called rational, not because it contains reason in itself, for they are formally distinct potentialities, but it is called rational because in man it is created ready to obey reason, and irrational because it is capable of not obeying reason, or formally admits of the exclusion of reason. From these premises it clearly appears that sensitive human appetite sometimes resists reason, and sometimes obeys it. When it resists, there is war and opposition ; when it obeys, there is peace and concord. The example in the great universe is clear, where all lower things are created apt to obey the higher things. Hence the saying of the same Philosopher in *Metaphysics*, i, and in *De Cœlo*, ii, that this world is necessarily in contact with the higher motions in order that all virtue may be thence directed, and yet sometimes it does not obey because of the disarrangement of matter, and thence come things contrary to the intention of the superior agents, such as monsters ; so the sensitive appetite, being lower, is apt to obey. Hence what the same Philosopher says in *De Anima*, ii, about that which is moved and that which moves, that if the intellect moves the sensitive appetite, and is obeyed by it, the motion is natural, as it is when a higher sphere moves a lower. But if the contrary, then the motion is not natural, as if a lower sphere were to move a higher. The example in a civil monarchy is clear, for some subjects oppose their princes. Consider the examples of this opposition in the continent and the incontinent man. For even in the continent man the sensitive appetite inclines to excess ; for example, to inordinate food, drink, or the like. Reason teaches that excess is to be avoided as injurious, and in the continent man intellect and reason prevail ; so that, properly speaking, continence is not an established moral virtue, for, as the same Philosopher says, in the virtuous man all things are harmonious. Hence, when, after many and frequent acts, a kind of readiness has been established in the sensitive appetite, inclining the sensitive appetite itself to the good, and to conformity with reason, then virtue really exists. But in the

incontinent man this opposition is obvious, but in him the sensitive appetite prevails ; yet his incontinence is not called an established vice until, after frequent acts, it has become so accustomed to incline to evil that it now always inclines that way without any opposition. This opposition is what we mean by Human Spiritual War in the strict sense, speaking in the terms of moral philosophy. Of this opposition, too, the Apostle speaks to the Romans, ch. vii, " I see another law warring against the law of my mind " ; quoted in xxxii, q. v, *si Paulus*. This opposition is also referred to in dist. vi, *sed pensandum* ; De constitutionibus, *nam concupiscentiam*. And Gregory speaks of this spiritual war in xxiii, q. i, *nisi bella*. Now in this opposition there is regularly, from youth upwards, an inclination to evil ; for every age, from youth upwards, is prone to evil ; Genesis, ch. viii ; xii, q. i, *omnis ætas*. And many reasons have been assigned for this. The first is because one can do evil of oneself, but good only by grace. Another is on account of the impetus of original sin which impels us to evil. Another is because evil is easier than good. For good consists essentially in a mean, but vices in extremes ; and there is only one straight way to the mean, but many ways to the extreme. Another is because there are more obstacles to good than to evil. Another is because good can only be done with the judgement of reason, in which young men are deficient, because of the darkening of their bodily organs. And this I believe to be the true reason. So much of Spiritual War, as to which more might well be written ; but I pass it by, because it would overstep the bounds of law, to which, as far as possible, I intend to confine myself.

Of Universal Corporeal War.

[Ch. ix.]

In the third place, as I am to treat of Universal Corporeal War, I shall set forth my treatment of the subject in the form of questions :

Firstly, by what law war had its origin and introduction.

Secondly, who may declare universal war, and against whom it may be declared.

Thirdly, what are the means of making war, briefly explaining what acts are lawful and what unlawful in persons making war, and formulating certain questions on those subjects.

Fourthly, what persons may be compelled to fight, and of those who participate in a war without compulsion.

Fifthly, of the spoils of war, and of certain other incidents of war.

Sixthly, by means of a table for the instruction of the canonist, of questions touching the matter of war. Whenever a subject has been treated in the Corpus Iuris Canonici by the glossators and doctors, I shall omit it.

By what law Universal Corporeal War had its origin.

[Ch. x.]

I return to my first question, and I ask by what law Universal Corporeal War had its origin. Solution. By the divine law and the law of nations. By the divine law ; this is proved by Joshua, ch. viii ; 1 Samuel, ch. xvi. By the law of nations ; ff. De iustit. et iure, l. *ex hoc iure*.

How Universal Corporeal War had its origin in Divine Law.

I said that wars arose by divine law ; here we must note that wars were introduced not only with the permission, but by the positive allowance, of the Lord. And this may be proved ; for every power tending to good is so derived positively, and not merely permissively. But the power of declaring lawful war tends to good ; therefore it proceeds positively from God. The major is proved ; for "every good gift and every perfect gift is from above and cometh down from the Father of lights," James, ch. i ; i, q. ii, *quem pio*. The minor is proved ; for a declaration of a lawful war and a lawful war itself tend to the good, for they tend to the peace and quiet of the world. This is proved by the authority of Augustine to Boniface, who says, "war is not sought that war may be practised, but war is waged that peace may be sought." He adds, "be therefore peaceful in war, and by your victory lead those whom you overthrow to the blessings of peace." These words are in xxiii, q. i, *noli*. The end of war, then, is the peace and tranquillity of the world. Therefore we conclude that it proceeded originally and positively from God. This is confirmed : For every act punishing evil persons proceeds from God, but the declaration of a lawful war is an act punishing evil and rebellious persons. Therefore it proceeds positively from God. The major is proved thus : For it is written, "To me belongeth vengeance, and I will repay" ; [Proverbs, ch. xxii] ; [xxiii, q. i, ch. *item cum in Proverbiis*] ; and in another place, "vengeance is mine, and I will repay," Deuteronomy, ch. xxxii ; Hebrews, ch. x ; Romans, ch. [xiii] xii. The minor is proved by the authority of Augustine in the Sermon on the Centurion's Son, xxiii, q. i, *paratus*, at the words *nam corripiendo*. We might even infer from this reasoning that it is theologically necessary that there should be evil and rebellious persons in the world ; for in the divine majesty are acts rewarding the good and punishing the evil, as it is written, "nullum bonum," &c. Further, on that assumption it might be argued thus, that, assuming an activity, there must necessarily be assumed an object of that activity. This is proved by the words of the Philosopher in De Anima, book ii ; for, assuming an act of vision, a visible object must be assumed. So too, assuming an act of hearing, an audible object must be assumed. Assuming, therefore, from the first creation of the world, an act of punishment in God,

it is necessary to assume an object of punishment, and that is Evil, as I showed above. The first principal proposition is confirmed: For every act whereby the power of injuring is taken away proceeds positively from God. But a declaration of lawful war is such an act. This is proved by the authority of Augustine, who says, "Wars are waged in order to bring the vanquished to the fellowship of piety and justice." He adds, "For defeat is beneficial to one from whom it wrests the power to do iniquity, since nothing is more unhappy than the happiness of sinners, which nourishes penal impunity, and strengthens the evil will, like an enemy within." These words are in xxiii, q. i, *paratus*, at the words *ac per hoc*. This is confirmed: All power is from God, by His command or permission; therefore warlike power proceeds from Him, but it so proceeds not only by His permission, but also by His command. Therefore He commands. The principal proposition is proved; Romans, ch. xiii; quoted in xxiii, q. i, *quid culpatur*. In short, is not this clear if we regard the generations of the world? for from the first creation of the world down to the times of Noah, God by His own act and without assistant was destroying the evil, as appears from the story of Cain and Abel, and certain other princes, in Genesis, chs. iv and v. Of Himself, therefore, He introduced wars to punish and destroy the bad. We conclude therefore, from the premises, that wars were originally introduced by divine law. Metaphorically, or rather perhaps naturally, it might be demonstrated thus: For as the natural philosophers say, man is a small world, and as government goes on in the small world, so it does in the universal whole, if the analogy be traced, as the Philosopher says in Physics, book viii; and in the natural ordering of the body it is clear that, when there is no excess of humours, there is no rebellion opposed to natural conservation and duration. But when there is excess of humours arising from disordered control, then there is a struggle of nature tending to conservation against excess tending to destruction; and in the struggle the natural power is sometimes strong enough to correct the opposition, sometimes it is powerless because of the excess of the disease, and then there is need of an extrinsic remedy, of a medicament partaking of the nature of poison, but of one which is opposed to the disease. So exactly in the great world. For sometimes, in a territory and region of the world, there is no excess of rebellious persons, and then there is no conflict, or rather the guiding hand of Nature tends uniformly to its conservation. Sometimes there is excess of rebellious persons, tending to the destruction of government and of conservation, and then sometimes Nature corrects it of itself, by monitions, exhortations, and other soothing processes, and then there is no need of war, or poisonous medicament. Sometimes the disease has advanced so far that a poisonous medicament is needed, extirpating the matter of the disease entirely, and such a medicament is a war to eradicate and exterminate the bad. So, then, in the small world, when the inner virtue fails we turn to a doctor, who operates by a remedy which is extrinsic and poisonous, just as in the great world the general governor, who is the Most High Creator, and the doctor of the universe, tending to its conservation

and government, when the humours which tend to its destruction or the destruction of a part of it have grown so great . . . uses the remedy of war to exterminate vices and excesses, and to reduce . . . to the proper temperature. And as in the human body these excesses of humours attack the several members of the human body, and even dissolution begins, sometimes because of excess of one humour, sometimes of another, so in the universe the several territories and regions of the world, which are the members of the great world, are attacked by these excesses of vices, which oppose its government, sometimes in one place, sometimes in another, according to the varieties of vices. And so it happens that the regions of the world are sometimes weakened by excess of vices, which sometimes grow so great that there is need of a medicament which will eradicate the good with the bad, just as medicine, too, drives out good and bad together. Nay, sometimes this excess leads to utter extinction, like death in individuals, as we may see for ourselves ; for innumerable regions have been utterly extinguished and rendered uninhabitable for these reasons. Innumerable examples might be cited ; and this same thing happens in families and governments, which also are reduced and utterly extinguished. And though what I have said has been metaphorical, yet it is most clearly proved by texts of the divine law ; for we read in Genesis, ch. xix, that on account of the excessive disease of Sodom, God used the eradictory medicament of war against Sodom, Gomorrah, Zeboim, Zoar, and Admah, though two of these perished because of their neighbourhood ; De Pœnit., dist. i, ch. *sed continuo* ; De excessibus prælat., ch. *clerici* ; and Authentics, coll. vi, ut non luxu. contra naturam, near the end. Innumerable examples might be cited. This medicament of war, too, is referred to in Joshua, ch. viii, for there our Lord orders Joshua to lay himself an ambush behind, that is, to set warriors in ambush to lie in wait for the enemy. And Augustine, in the Liber Quæstionum, says of the words of Joshua, " Wars are called lawful which avenge injuries," that is, excesses of offences. And he adds, " So a people or a city must be made to suffer which has neglected to punish the wrong-doing of its own men." He adds, " but this kind of war is undoubtedly lawful, because God, Who knows what is every man's due, ordains it." He does not say " permits," but " ordains." He adds, " in such a war, the general of the army or the people itself should be regarded not so much as the author of the war as the minister of God." And thus it is clearly proved that God, as the most high doctor and preserver of the universe, ordains wars in order that offences may be rooted out. These passages are quoted in xxiii, q. ii, *Dominus Noster*. Of this war and eradictory medicament it is also written in 1 Maccabees, ch. v, and Deuteronomy, ch. ii, where, by the command of God, the sons of Israel wage wars against the Amorites ; and Augustine also treats of it in the book of Numbers, quoted in xxiii, q. ii, ch. *notandum sane*. Of it also it is written in Judges, ch. v, " the Lord appointed new wars," referring to wars which eradicate excesses of vices. Isaiah, too, writes in ch. xxx, " and in battles of shaking will he fight," like a warrior. Of those who

eradicate, it is written also in 1 Maccabees, ch. iv, "take heart and fight." And in Jeremiah, ch. xx, also it is written, "The Lord is with me as a warrior." Jerome, on Zephaniah, describes it most beautifully in the words, "if a man enfeebles the strength of a robber or a pirate and renders them weak, their weakness advantages them; for the weakened members, which formerly they used ill, will cease from evil works." Jerome's conclusion is that the vicious are made healthy by the expulsion of the disease which disposed their infected members to evil, and this is done by an eradictory war. This passage is xxiii, q. iii, ch. *si quis fortitudinem*. This is clearly proved by what is written in Luke, ch. xii, and in Hebrews, ch. xii, where the Lord says, "That servant which knows not his lord's will and commits things worthy of stripes, shall be beaten with few stripes; but that servant which knows his lord's will and commits things worthy of stripes, shall be beaten with many stripes." So he who exceeds received stripes from the Lord. This passage is cited in xxiii, q. iv, ch. *ea vindicta*. Hence we read that Elijah put many to death by his own hand and with fire obtained from heaven; 2 Kings, ch. i; and ch. *ea vindicta*. Further, in xxiii, q. iv, it is so written of others in the time of the old dispensation; 1 Kings, chs. xvii and xviii; and so it is written that Ananias and his wife fell dead at the words of Peter, the chief of the Apostles; Acts, ch. iv. This is quoted in xvii, q. i, *Ananias*; and xxiii, q. iv, *ea vindicta*, at the end. And Gregory has a beautiful passage about this eradicating war, written to Brunhilda, queen of the Franks, in which he says, "lest, if, because of our unbelief, the anger of the divine vengeance should be stirred by the acts of the wicked, the plague of war should destroy sinners whom the precepts of God do not recall to the path of rectitude"; xxiii, q. iv, *si quos*. Does not the Lord say to Moses, "thou shalt not suffer malefactors to live"? Exodus, ch. xxii. Moses, too, who had received the law from the Lord, punished the worshippers of the idol with death; Exodus, ch. xxxii; and Samuel, by the Lord's command, hewed in pieces Agag, the richest of kings; 1 Samuel, ch. xv. These passages are quoted in xxiii, q. v, ch. *hinc apparet*. The Lord also drowned the Egyptians in the waves; Exodus, ch. xiv; and he scattered the corpses of the Israelites in the desert; Numbers, ch. xiv. These passages are cited in xxiii, q. v, *quid ergo*. Innumerable examples might be cited to prove this from the old and the new divine dispensations; but these are sufficient to establish the conclusion that wars originally had their origin in divine law, and not merely by God's permission, but rather positively from God Himself, as the governor of the world, and the doctor who eradicates its vices, for the sake of the salvation and conservation of the world, and because these remedies of war tend to this end, as I clearly showed above: and we can see for ourselves that, because of this . . . and excess of manifold vices in the advancing destruction of the universe, the Most High Creator in times past used this eradictory remedy; for how many kingdoms and governments of the world have been utterly destroyed, how many brought low? What of the empire of the Trojans? or that of the Greeks? or the universal dominion of the

Romans ? Parts of Italy in our own times are in fever and are being subjected to trial. The medicine is being prepared ; . . . according to the doctrine of the most learned Hippocrates, in the first book of the Aphorisms. . . . But this conclusion, that wars proceed positively and originally from God, might be proved by observing the uniform and perpetual instrument of the divine majesty. For the Most High Creator of all works through the mediation of the celestial frame on this terrestrial frame naturally, howbeit supernaturally. When He wills, He inspires and influences it immediately ; but I speak in terms of natural philosophy, following the saying of the most learned Philosopher, in *De Meteoris*, i, and *De Cœlo*, ii, that it is necessary that this world should be in contact with the higher motions, in order that all virtue may be directed thence. Therefore the Most High influences naturally these lower regions by the mediation of a celestial and spherical body, while that whole body works by the mediation of motion and light, as the same Philosopher says. And because in the whole celestial frame itself there are parts which have virtues of diverse influence, as the variety of spheres, the diversity of wandering and fixed stars, on which, by reason of the variety of their natures and motions, every created and corruptible thing effectively depends, therefore a certain contrariety and diversity of natures, an opposition arising here below, is dependent on that above. Whence it may be at once inferred that, as opposition and difformity are the causes introducing wars, wars arise thence ; and more, experience teaches that uniformity and difformity of aspects at the time of birth give rise to natural affections and natural enmities between men. This any one may experience ; for one will love another at sight, with no antecedent merits, and one will hate another in the same way, with no antecedent demerits. So affections and hatreds arise naturally between cities and towns and camps, on account of the uniformity and difformity of aspects at the time of their construction ; and so from celestial influence arise hatreds, and wars, and friendship, and peace, and it is the same between provinces. But this celestial nature, by the mediation of motion, is productive of generation and corruption, of growth and diminution in these lower things ; and its influence is felt not only on single things below, but on whole regions of the world, for by this higher nature habitable regions have been made uninhabitable, and uninhabitable habitable. For, according to the teaching of the Philosopher, when the sea shall become dry, . . . from this opposition of natures and dispositions from which arise quarrels, contentions, wars particular and universal. This opposition, on account of the variety of motions and aspects, exalts some, extinguishes others, depresses others, and changes the governments of the world, universal and particular. And this may be proved ; for if the sufficient productive cause of any effect is established, the effect must needs be produced, unless something extrinsic is present to hinder its production ; but the celestial nature is continually changing in motion and aspect, and its parts differ by their own nature in influence. Therefore these opposed and different effects must needs be produced, since there is nothing to hinder them,

and from this we might infer that wars must needs be in the course of nature and that otherwise the government of the world would not proceed naturally. Yet I protest that although the celestial nature has this effect on these lower things, yet it does not work of itself and directly upon the human intellect, but the freedom of the will endures ; xxiii, q. iv, ch. *Nabuchodonosor*, and ch. *de Tiriis* ; De Pœnit., dist. ii, ch. *sicut enim* ; and the Philosopher, Ethics, iii. But it works on the organ of the sensitive virtues, which receive the influence and direct the intellect, and thus its influence is indirect. Hence what is written in the Centiloquium, " the wise soul dominates the stars." But inasmuch as to treat of this subject would take me too far from the bounds of law, I say no more about this conclusion ; but let it suffice that we have inferred and proved, by what has been said, that wars have proceeded from God positively and effectively, although the last discussion shows us that they came not immediately, but by the mediation of the celestial frame, by the operation of natural causes.

How Universal Corporeal War had its origin in the Law of Nations.

[Ch. xi.]

I said, secondly, that wars were recognized by the law of nations. Now here, although the laws say that wars were introduced by the law of nations—as, for instance, Isidore, dist. i, *ius gen.* ; and the jurist Hermogenianus in ff. De iustit. et iure, l. *ex hoc iure*—yet I think that wars had their origin not only in the equity of natural human created intelligence, but primordially in the disposition of creative Nature, which influences not only human actions, but all other things animate and inanimate also ; so that it is true to say that wars have their origin in natural law, even as distinguished from the law of nations. As to how these differ, I may refer to ff. De iustit. et iure, l. i, § *ius gen.*, and § *ius naturale*, and l. *ex hoc iure* ; and dist. i, *ius naturale*, with the gloss thereto, and ch. *ius naturale*. That this is true may be shown thus : Natural first principles have implanted in every created natural entity a natural inclination to exclude everything opposed to its natural disposition. This is clear if we look at particular natural entities, simple and mixed ; for resistance to fire is implanted in water, and resistance to water in fire, because of the opposition of their qualities. This which is true of single elements might be shown to be true of things mixed ; but it is especially clear in the brutes, where, from a natural opposition of complexions, one is inclined naturally to kill another, and the other to kill it. Thus, in a rational creature Nature has implanted an inclination, even circumscribing the dictates of the intellect, to hunt whatever is repugnant to itself. That this is true, reason shows ; for Nature, the producer of all created things, must be not less solicitous in the conservation of a rational creature than of its other products, since the former is itself nobler ; De pœn. et remiss., ch. *cum infirmitas* ; and De sac. sanc. eccles., l. *sancimus* ; and xxxiii, q. v, ch. *hæc imago* ; and for its sake, as the

end, all things below the lunar globe were produced ; ff. De usuris, l. *in pecudum*. If, therefore, Nature has implanted a natural inclination in all other created things to hunt whatever is opposed to themselves, how much stronger must this inclination be in a rational creature ? The same thing is clear to our senses if we examine particular instances, for any one experiences this in himself, if this instinct is implanted in men by natural first principles ; and therefore war had its origin primordially in this natural inclination, since war, as above described, is a contention arising for the sake of destroying opposition. We may infer, therefore, that this contention which arises for the sake of destroying what is discordant and opposed to one's own conservation has its origin fundamentally in natural first principles, and so in the law of nature, as distinguished from the law of nations. But you will say at once that this conflicts with the texts which say that it arises from the law of nations ; but as to that, we must observe that, although this natural inclination is introduced by natural law, our natural intelligence being limited, yet the inclination is regulated by the dictates of reason and natural intelligence ; just as we say of particular acts which are proper to men by nature, their intellect being limited, such as the inclination to food and drink and sexual intercourse, that these acts are natural to men, and yet in a man they are regulated by the dictates of reason, which is not the case with the brutes, for they lack that dictation. So, then, I believe that the meaning of those texts was that the regulation of that inclination, introduced by natural first principles, arises from the law of nations, that is, from the general equity of natural intelligence, but the inclination itself is from natural law. This is proved by the gloss on ff. De iustit. et iure, l. *ex hoc iure* ; and dist. i, *ius gent.* For the gloss in both passages to the word " wars " adds, by way of explanation, " lawful," and so understands the text to refer to an inclination regulated by the dictates of reason. And although the texts say that wars arise from the law of nations, yet I do not think it false to say that wars, that is, these regulated inclinations, have their origin in the civil law and in the canon law. For the civil and the canon laws do not speak of an equity different from the equity of the law of nations ; rather they are that equity itself, for all law consists in a kind of rectitude, and that is why it is called " ius " ; dist. i, *ius generale*. But the civil and the canon laws are the rectitude of life and the equity of the law of nations. But they add to that rectitude a kind of explanation, for they have to specify and explain the rectitude and equity of the law of nations, sometimes by limiting it in suitable modes, sometimes by applying it to various acts, sometimes by determining it by various events. All these points are proved by the text in ff. De iustit. et iure, l. *ius civile*. For the text there says " the civil law is a law which is neither wholly distinct from natural law or the law of nations, nor wholly subordinate to them ; and so when we add anything to or take anything from the common law, we make it special, that is, civil, law." It is therefore true to say that wars come from the civil and the canon laws, that is, from rectitude itself, which is the civil and the canon laws. Nor are the texts just

cited opposed to this, because that rectitude, with nothing added or taken away, is called the law of nations. And so the laws just cited say ; but when something has been added or taken away, then it is called civil or canon law ; no one, however, doubts that the civil and canon laws do add something on the subject of wars to the dictates of general reason. The foregoing discussion shows us in what law wars had their origin.

Who, first and chiefly, may declare Universal War, and by what Law, and against whom ?

[Ch. xii.]

I ask, secondly, what law allows the Church to declare war against infidels, and to invade their territories, and to grant indulgence on this account, since the laws seem to ordain the contrary ; for those who are outside the Church are nothing to us ; ii, q. i, *multi*. Also by origin their possessions and jurisdictions belong to them. For God so arranged throughout the whole rational creation, for he makes the sun to rise on the just and on the unjust ; Matthew, chs. v and vi, at the end. Also men are not to be compelled to the faith, for all others who have not been incorporated are to be left to their own will ; dist. xlv, *De Iudæis*. And what is more, jurisdiction may be delegated to the infidel over those who are converted to the faith, provided it do not burden them too heavily ; 1 Timothy, ch. vi. In the second place, to make the matter clear, we must observe that I ought here, in the first place, to set out the matters which I have treated on the subject of reprisals at the beginning, namely, whence the Church had its jurisdiction, and also whence the Emperor had his ; but I do not set out these matters here, because they have been fully treated there. On this understanding, then, we ought also to observe that in the same community and under the same king there are two peoples, and for the two peoples two lives, and for the two lives two governments, and for the two governments a twofold order of jurisdiction. The community is the Church, the one King is Christ, the two peoples are the clergy and the laity, the two lives are the spiritual and the carnal, and the two governments are the priesthood and the Empire ; but of these one is supreme, namely, the Papacy, to which the other is subordinated. Otherwise the argument of the Philosopher in *Metaphysics*, book xii, showing the unity of the Creator, would be absurd. He says that a multitude of governments, evil entities, tend to be ill-disposed, therefore there is one head ; and so precisely in the question before us ; also because, in any class of entities, it is possible to postulate one that is first, which is the mete and measure of all the others, as the same Philosopher shows. So in a whole monarchy it is possible to arrive at the head ; and so, too, in natural objects it is possible to arrive at the primary motionless motive power, as the same Philosopher shows in *Physics*, books vii and viii. The Empire cannot

stand in such a relation to the Papacy. I pass over innumerable arguments, and merely cite the following, which will suffice to show that there is one Lord of the earth: vii, q. i, *in apibus*; ix, q. iii, *cuncta per mundum*, and ch. *per principalem*; ff. Ad leg. Rhod. de iact., l. *deprecatio*. And he is the Pope. He has jurisdiction not only over the faithful, but also over infidels, as is shown more clearly than day; for Christ had power over all, whence the passage in the Psalm: "O God, give thy judgement to the king." If Christ had it, He would not have been a loving father, if, when He constituted Peter His vicar, He had not entrusted the charge to him, which it is sinful to suppose. Also He handed to Peter the keys of the kingdom of heaven, saying, "whatsoever thou shalt bind," &c.; Matthew, ch. xvi. And in another passage, "Feed my sheep," in the last chapter of John. So, therefore, the Pope, as a matter of law, has jurisdiction over infidels, though not as a matter of fact. Hence it is that if a barbarian, who has only the law of nature, sins against the law of nature, he may be punished by the Pope. For it is written in Genesis, ch. xix, that the Sodomites were punished by God; therefore the Vicar of God also has this power. The same, too, if they worship idols; for it is natural to worship the Creator and not His creatures. So, too, he may punish Jews, if they act contrary to their own law in matters of morality, and are not punished by their governors. There is no doubt that he may punish Christians, if they act contrary to the law of the Gospel. From all this we infer that the Pope, like a true prince, may declare war against infidels, and grant indulgences for the recovery of the Holy Land, and especially of the land consecrated by the birth of Christ, by His habitation, and death, where Christ is not worshipped, but Mahomet. Also, the Holy Land was conquered, after the death of Christ, in a lawful war by the Roman Emperor, who was afterwards robbed of it by the infidels. Therefore the Pope may recover it by reason of the principality which he holds. But in other lands which are not consecrated, and where neither the Empire nor the Church had jurisdiction, the Pope may in fact command that they do not molest their Christian subjects. Otherwise he may by a judgement deprive them of their jurisdiction, and thereby . . . which Innocent noted, *De voto, quod super his*. The solution of the first question is clear, namely, of the justice of a war declared by the Church against infidels; and from this may be inferred the justification of a war declared by the Emperor against enemies.

Evidential. And a discussion as to who are the emperors against whom war may be declared.

[Ch. xiii.]

Here we must note that there are two peoples, the Roman people, and strangers. To the Roman people belong, first, all who are in complete obedience to the Roman Empire, for the people means the whole Empire; Ad municipi-

palem, *l. Roma*. Some are not in complete, but only in partial obedience to it, as when they live according to the laws of the Empire and admit the Emperor to be lord of the earth, like the cities of Lombardy and the like ; and these, too, belong to the Roman people, since it exercises jurisdiction in some matters ; De aqua plu. arc., l. *si prius* ; and this passage should be noted. There are some peoples who neither obey the Emperor nor live according to the laws of the Empire at all, but say that they have this position by privilege, like the Venetians, who assert that they have it by privilege. These, too, belong to the Roman people, because they hold their privilege at the will of the Emperor, and he can revoke it whenever he will ; ff. De legat., iii, l. *si quis in principio*. Moreover this privilege, when granted to them, ought to be so ordered as not to deprive them of Roman citizenship ; ff. De captivis, l. *in bello*, § *si quis servum*. There are other peoples who do not obey the Emperor and assert that they have this immunity by contract, like the provinces subject to the Roman Church, which assert that it belongs to them by the gift of Constantine and other Emperors ; and these, too, belong to the Roman people, for the Church exercises there the jurisdiction which the Empire had, and hence they do not on that account cease to be Roman citizens. I say the same of the kings who do not admit that they are subjects of the Emperor, as the King of France, of England, of Spain, and the like, who assert that they are independent by privilege or prescription. And by this I conclude that almost all nations which obey the Holy Mother Church belong to the Roman people ; and any who should say that the Emperor is not lord would be contradicting the text of the Gospel, when it says, " there went out an edict from Cæsar Augustus," &c. But there are foreign peoples who do not admit that the Emperor is lord, like the Greeks, who say that their emperor is lord. So, too, the Tartars say that Grancanes is lord, and the Saracens say that their emperor is lord. Among those peoples, however, there is a distinction, for some of them are allied to us, as the Greeks against the Turks ; there are others with whom we are at peace, like the Tartars, for our merchants go to them and theirs come to us ; there are others with whom we have no dealings, like the Jews ; and others with whom we are at actual war, like the Saracens, and to-day, the Turks. We infer, then, that, since the Emperor is the secular head, having no superior in secular matters, except perhaps in the instances I have mentioned he may declare war against his enemies ; and who these are was clear from the passage immediately following. And this is the war which is spoken of in ff. De captivis, l. *hostes* ; and De verbor. significatione. And herein war claims its place, and therefore it is declared by the Roman people or Emperor, so that, if the Emperor declares war on any rebellious cities of Italy, that war ranks as a public war, because to resist an official of the Emperor or of the Pope, if the resistance is not in the name of the Emperor or the Pope, is one and the same thing.

Whether universal war may be declared by others than a prince ?

[Ch. xiv.]

I ask whether universal war may be declared by others than a prince. Solution : It may not be declared without the authority of a prince, for no one may bear arms without a prince's licence ; C. Vt usus armorum, in red ; and the gloss on Authent., De mand. princ., coll. iii ; and on Authent., De armis, coll. vi. And the reason is that no one may violate the laws of princes without the prince's licence. But one who, without the solemnity of law, with kingly authority, makes law for himself, when he might resort to a lawgiver, does violate the law ; therefore it is not lawful without the prince's authority. The prince, then, alone may declare war by his own authority, since he has no superior to whom he may resort to obtain justice. To-day, however, because there are peoples who do not recognize a superior in fact, the authority of a superior is not required, since they do not recognize one. Nay, every day wars are declared by one people against another, without asking the leave of any one.

Whether war made by the Emperor against the Church is lawful, and whether subjects are bound to obey him therein ?

[Ch. xv.]

The second question is whether a war which the Emperor makes against the Church is lawful, and whether subjects are bound to obey him therein. It appears so, because it is by the authority or command of the prince ; therefore, &c. Also because there are two jurisdictions ; De iudiciis, *novit* ; Qui filii sunt legitimi, *causam*, and ch. *per venerabilem* ; De appell., *si duobus*. Also because subjects are bound to obey the Emperor in matters concerning the use of arms, even if he be schismatic ; xi, q. iii, *Iulianus*. Solution : The contrary is true, for the Emperor is the Church's advocate and is bound to defend it ; therefore he may not attack it ; De natis ex libero ventre, the single chapter ; De restit. spol., *conquerente*. Moreover, by declaring war against the Church he deserves to lose the privilege of declaring war, since he abuses it ; xi, q. iii, *privilegium* ; De decimis, *suggestum* ; so that he may be punished for his offence ; De translatione, *quanto*, § *ne autem*. Nay, such obstinacy in the prince does not differ from heresy ; De hæreticis, *excommunicamus*, i, § i ; and this passage should be noted. Also because the Pope is his superior ; for he examines, reproves, and deposes the Emperor himself ; De elect., *venerabilem* ; Sext., De re iudic., *ad apostolicæ*. In this case, therefore, subjects are not bound to help the Emperor against the Church, but rather the contrary. And the Pope may absolve them from the bond of fealty ; xv, q. vi, *nos sanctorum*, and ch. *iuratos* ; and note De hæreticis, *excommunicamus* ; De pœnis, last chapter ; and in this matter, Hostiensis, De resti. spoliatorum, *olim*.

What is the law when the Pope makes war against the Emperor ?

[Ch. xvi.]

The fourth question is what, on the other hand, if the Pope declares war against the Emperor ? The solution appears from what precedes ; for if the Pope declares war against an Emperor who is schismatic, heretic, or otherwise usurping the rights and liberties of churches, all the faithful are bound to help the Pope, and even vassals of the Emperor may be absolved from the oath which binds them, or may be declared not to be bound ; xv, q. vi, *iuratos*, and ch. *nos sanctorum*.

Of the means of making war and carrying it on.

[Ch. xvii.]

Thirdly, it remains to consider the means of making war and carrying it on, and also what should be done in actual war.

Of the legion and the cohort, and who and how many are required therein.

In war there are legions, and a legion has seven thousand one hundred foot-soldiers, and seven hundred and nineteen horsemen. There are cohorts, and a cohort has twenty companies. A "milliaria" cohort has one thousand one hundred and five foot-soldiers, and a hundred and thirty-five horsemen. A "quingagenaria" cohort has five hundred and fifty-five foot-soldiers, and sixty-six horsemen. So the gloss notes in ff. De his qui not. infam., l. ii. These, then, with a general and discipline, make a war, taking war in the sense of a multitude apt and prepared for war, and not merely of the act of making war. But the two chief foundations of a war are arms and strength. These are divided into three parts, cavalry, infantry, and fleets. For cavalry protect the plains ; fleets, the seas and rivers ; and infantry, the hills, cities, and steep plains. Hence we may infer that infantry are more necessary to the commonwealth than cavalry, because they are useful everywhere.

How soldiers should conduct themselves in war, whom they should obey, and from what they are commanded to abstain.

[Ch. xviii.]

Now soldiers should so conduct themselves in war as to keep the oath which they have taken ; for they have sworn that they will strenuously perform all the orders of the Emperor, and will never desert their service, nor shrink from death in the defence of the commonwealth ; ff. Ex qui. caus. maiores, the last law but one ; and C. De his qui non implet. stipend., book x, l. i. They

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ought to obey their generals ; l. *collatores*, at the beginning. For since the commonwealth cherishes and supports them, they ought to devote themselves to the public interests alone, and do their service by preparing themselves for war by the daily practice of arms ; C. De re militari, l. *milites*. And so they ought to obey their generals, because, if they disobey their commands, even in a good cause, they are punished with death none the less ; ff. De re milit., l. *desertorem*, § *in bello*. They ought to abstain from the cultivation of the land, from the care of animals, from trade in commodities. They should not manage the business of other people, nor engage in civil duties ; otherwise they will be deprived of their service and its privileges ; C. De re milit., l. *nemo milites*, and l. *qui militares* ; C. De locat. et cond., l. *milites* ; C. De procur., l. *militem*. They should not buy lands in the places where they serve, and at the time of their service, not even on another's account ; otherwise they are forfeited to the treasury. However, if they are not disturbed before their discharge, they will not be interfered with afterwards. There are exceptions to this rule when the treasury is administering the insolvent estate of their parents, and when they claim by inheritance. The reason of the rule is that they may not be distracted from their military duties by agricultural pursuits. See ff. De re milit., l. *milites*.

What belongs to the office of a general in war ?

[Ch. xix.]

A general in war should be very sparing in giving supplies to his troops ; should not allow the military horses to be taken out of the province ; should keep his troops in camp, train them to the practice of arms, not send them on his private business, fishing, or hunting ; should carry the keys of the gates, go round the watches, concern himself with the foraging of his troops, approve their food, punish fraudulent measurement, chastise offences, hear the complaints of the troops, inspect the sick. On these matters see ff. De re militari, l. *officium*. It is also his duty to place his legion on the green banks of a river, and to see that no man pollutes the water of the river in any way, or offends the public eye by washing off the sweat of horses, but to permit this to be done at a distance in the lower parts of the river. See C. De re milit., l. *ingentis*. It is also his duty to pitch the camp where there is plenty of wood, fodder, and water ; and for a stay of any length, he should choose a healthy place not too near to the sea, or an elevated place not likely to be captured by the enemy. He should consider, also, whether the field is wont to be flooded by torrents. For this see Vegetius, De re milit., book i, ch. xx. It is also his duty to fortify the camp according to the number of his men, that a large number may not be too confined, nor a small number obliged to extend itself too widely. A good general will also recognize a place in which to fight, which is considered better the higher it is. But if he hopes for victory against the enemies' soldiers from his infantry, he should choose places which are uneven, rough, and hilly ;

if not, places which are level and open, and not impeded by woods and marshes. See Vegetius, *De re militari*, book iii, ch. xiii. It is a general's duty to take cognizance of the contracts and delicts of his men ; but this is also the duty of the special " *magister militum* " ; C. *De iurisd. omn. iudic.*, l. *magisteriæ* ; and C. *De re militari*, l. *tam collatores*.

How soldiers are punished differently, according to their different offences.

[Ch. xx.]

Now soldiers are differently punished, according to their different offences. Their offences are either special or common. And in their special offences they are punished by military penalties, and the penalty is often increased with the grade of service ; ff. *De re militari*, l. ii. The punishments are pecuniary fines, deprivation of rewards, ignominious discharge from the army, degradation of rank. A soldier is not condemned to the mines, nor to work in the mines, but is beheaded ; for he is regarded, not as a soldier, but as an enemy ; ff. *De re milit.*, l. iii, § i, and § *is qui*, and l. *proditores*. Death is the punishment for those who lay hands on an officer, who are disobedient, who are the first to take to flight in the sight of the others ; for spies who betray secrets to the enemy ; for malingerers who feign illness from fear of the enemy ; for those who wound a comrade with a sword, who wound themselves without cause, or attempt to commit suicide. Not however if they do so from weariness of life or impatience of pain, for these are made " infamous " ; whereas those who offend through drunkenness or lust are discharged from the service. One who does not defend his officer when he could do so is punished with death. One who could not is spared. See ff. *De re milit.*, l. *omne delictum*, and l. iii, last section. Also one who refuses to go scouting when the enemy are pressing on, or who retires from a trench, is punished with death, even if he acted with good intention ; ff. *De re milit.*, l. iii. Also a soldier who disturbs the peace is punished with death ; ff. *De re milit.*, l. iii. Also one who stirs up a serious sedition. A deserter in time of war is punished with death ; in time of peace a horseman is degraded, a foot-soldier is discharged ; ff. *De re milit.*, l. *non omnes*. Not all deserters, however, should be punished equally ; but regard should be had to their rank, length of service, and other circumstances. One who goes beyond the space for foraging is regarded as an absentee or a deserter. But the number of days by which he has returned sooner or later is taken into account, or any obstacle which may have detained him ; ff. *De re milit.*, l. iii, last section, and l. *qui commeatus*, and l. *non omnes*. His previous record is also taken into account. An absentee is one who has wandered from the camp but returned to it ; a deserter is one who, after wandering for a long time, is brought back to camp ; ff. same title, l. iii, § *emansor*. A deserter, if found in a city, is punished with death ; if found elsewhere, and if he deserts again after being captured

in his first desertion, he is punished with death ; ff. same title, l. *non omnes*. The goods of deserters are confiscated after their death ; C. De re milit., l. iv.

Of fortitude and its nature, and when fortitude is to be called moral and when not, and when fortitude conducts war to a right end, and when not ?

[Ch. xxi.]

✓ But as it has been said that fortitude and arms are the chief foundations of war, and as in law the nature of fortitude is not explicitly discussed, it is desirable that its nature should to some extent be explained. And I ask, first, whether fortitude is a moral virtue ; and it appears that it is not. For fortitude is a disposition of the body ; C. book xi, De athletis, l. i ; ff. De his qui not. infam., l. *athletæ* ; ff. Ad leg. Aquil., l. *qua actione*, § *si quis in colluctatione* ; De pugn. in duello, throughout ; C. De gladiatoribus, the single law ; De torneamentis, throughout. Therefore it is not a moral virtue, since a disposition of the body differs from a habit or disposition of the soul, and is itself inferior in degree ; De poen. et rem., *cum infirmitas* ; xii, q. i, *præcipimus* ; xxiv, q. iii, *si habes* ; C. De sacrosanctis eccles., l. *sancimus*. Secondly, it seems to be a moral virtue. Every moral virtue aims at a mean in feeling and action, as the Philosopher proves in Ethics, book ii ; but fortitude aims at a mean, as he also shows in Ethics, book iii. Thirdly, that which is not a virtue is not virtue, but rather virtues, since the plural number is satisfied by the number two at least ; ff. De testi., l. *ubi numerus* ; causa iv, q. iii, § *ubi numerus* ; and De reg. iur., book vi, rule *pluralis*. And this is confirmed by the Philosopher, in the Elenchi, book i, for the definition of preposition and of a preposition is the same, but fortitude is not a virtue. This minor premise is proved. For a virtue is opposed to two extreme vices ; dist. xli, *sæpe* ; De consuetudine, *ex parte*. But four extremes are opposed to fortitude, namely, fearlessness and timidity or fear, and audacity and deficiency in audacity, which has no proper name, as the text shows in Ethics, book iii. The Philosopher proves the opposite in Ethics, book iii. For the solution of the question we must observe that the meaning of " fortitude " is equivocal ; it may refer either to the fortitude which is the same thing as strength of body, or to the fortitude which is moral virtue. The first is a power which enables one to move a thing, as the Philosopher proves in Rhetoric, book i ; and both kinds are required in war ; and so when I said that fortitude, or strength, and arms are the foundations of war, I used the word generally, since both kinds are required. But as to the first, which is the strength of the body, there is no doubt that it is not moral virtue, for the reasons given above ; but as to the second, the question must be continued ; and it is the virtue which makes us behave aright in the matter of fear and audacity in the dangers of war. Let us pursue this kind of fortitude, for the first is plain to the blear-eyed and to barbers. Now for the understanding of the fortitude of the soul, we must observe that, in the matter of daring and fearing, one may exceed or fall short ; and in either case one acts wrongly.

One may also keep oneself to the mean, and so act virtuously. Audacity, however, differs from fear; for audacity is a feeling of the irascible appetite, inclining us to attack what is terrible. Fear inclines us to flee, as any one may experience in himself. But either may be a good or a bad act; for if a man were to see ten armed men and attack them alone, that would be a bad act; and if he were not to flee, it would be a bad act, bad as regards the attacking, and also bad as regards fear. So, again, a man may exceed in fearing; as, for instance, if there are a hundred men in a fortified place, and they see only a hundred men against them and flee—that is a bad act. So, too, by not attacking; as if they see a city being spoiled and do not attack—that is a bad act. So you have illustrations of excess in not fearing when fear is expedient, in fearing when fear is not expedient, in attacking when attack is not expedient, and in not attacking when attack is expedient; and so you have the extreme vices, audacity and fear, and degree in each case, as above. Further, it is to be noted that, wherever we find vicious and blameable excess of extremes, there we may find a mean which is good and laudable; because if the whole were bad and blameable, we could not say that the defect was blameable, for the defect would be a defect of bad, and so would not be bad. It is right, therefore, that in the mean there should be a good with respect to which one quality is said to be bad by exceeding, another bad by falling short. From these arguments, two conclusions for the solution of the question may be inferred. The first is, that fortitude of the soul is moral virtue. The second, that it is *a* virtue. The first is proved; for every habit of choosing a laudable mean is moral virtue. Fortitude is such a habit; therefore the major is proved by the argument from definition, which is a valid argument in law; ff. De reg. iur., l. *omnis definitio*; ff. Depositi, l. i, at the beginning, and same title, l. *bona fides*. But the Philosopher so defines moral virtue in Ethics, book ii. The minor is proved; for fortitude is a habit of choosing the mean with regard to fear and audacity, as the same Philosopher proves in Ethics, book iv. The argument is confirmed thus: Moral virtue is that which is bred in us by “*mos*,” that is, by custom, and that is why it is called “moral.” Fortitude is so bred in us; therefore the major is proved by the argument from the formal cause, which is a valid argument in law; ff. Ad leg. Falc., l. *si is qui quadringenta*, § *quædam*; ff. Locati^o, l. *rei*, § *opere*; ff. De verborum sign., l. *ædificia*, § *perfecisse*, and same title, l. *quæ forma*^o; i, q. i, *detrahe*; De bapt., *debitum*. The minor is proved. For in an act of war the sensitive appetite, on account of the dangers, inclines a man to flight, as the Philosopher says, and in war anger, which is an impetuous feeling and so inclines us to vicious extremes, claims a place for itself. But virtue, which is a rational promptitude of the appetite, inclines us to the mean; and this promptitude is bred by repeated acts; otherwise we should not act gladly, and so it would not be virtue, since in the virtuous man there ought to be no opposition of appetites, as the same Philosopher says in Ethics, book ii. And so the first conclusion is clear, namely, that fortitude is moral virtue. The second conclusion is that it is *a* virtue. Some authorities

prove this as follows : Fear and audacity are opposite feelings ; fortitude is the virtue between them ; therefore it is only one. The consequence is proved thus : For every agent which tends to the increase of one of two opposites, tends to the decrease of the other. And so virtue which decreases fear, increases the opposite, and conversely. This is confirmed thus : Moral virtues are fortified by their end ; but the end is single ; therefore the virtue is single. The first point is clear by the argument from the final cause, which is a valid argument in law ; ff. De quæstionibus, l. *unius*, § *si servus* ; ff. De decur., l. *generaliter* ; C. De episc. et cleric. ; causa xvi, q. i ; De appell., ch. *cum cessante* ; and De iureiurando, ch. *etsi Christus*. The second is clear. For the end of fortitude in war is the common good. And any man who makes war for the sake of gain is not brave, but rather avaricious. Others hold a different view, and say that fear and audacity are not opposite feelings. They prove it thus : Fear and audacity are compatible with one another in the same respect of the same thing ; therefore they are not opposites. The consequence holds, because, if one of two opposites is established, the other is excluded ; ff. De instit., l. *sed si pupillus*, § *si institoria* ; ff. De reg. iur., l. *ius nostrum* ; De verb. sig., l. *hæc verba* ; Authent., coll. iii, De mand. princ. ; dist. xxxii, *hospitiolum* ; and similar passages. The first point is clear. For a man may well wish to make war for the sake of what is good and honourable, and yet fear because of God ; or he may make an attack, and thus audacity is present, and yet fear that he may be injured, and thus fear is present. This opinion is against the text of the Philosopher in Rhetoric, book ii, nor is their reasoning valid, for pleasure and pain are opposites in all cases ; and yet the same act may give the same man both pleasure and pain. For example, in adultery the sensual enjoyment may give pleasure, but the dishonour, pain. So of one who throws merchandise overboard into the sea because of a storm ; and so in the case in hand the man fears because of the evil present, and dares because of his hope. The first opinion, therefore, is the truer ; and hence Albertus holds that, although there are four extremes, as above, yet they only indicate two characters. For whoever is inclined to dare rightly, does not fear ; and whoever is not inclined to fear rightly, does not dare ; and so he infers a single virtue. Others say that there are only two extremes ; for if a man fears nothing, he dares too much, and so fear and audacity make one extreme. Suffice it to conclude from the foregoing discussion that fortitude, which is one of the chief foundations of war, taken in the sense of strength of body, is not moral virtue ; but taken in the sense of a virtue of the soul, it is moral virtue, and a single moral virtue ; and it is this which conducts war to a right end.

Whether fortitude is a cardinal virtue ?

[Ch. xxii.]

We have discussed the fortitude which is a chief foundation of war, and have seen that it is moral virtue and a single virtue. But as I address this

treatise to a Cardinal, I ask whether it is a cardinal virtue. It appears that it is not. For magnanimity is not a cardinal virtue; therefore fortitude is not. The inference holds by the argument from the major, which is valid in law; C. De neg. gest., l. i; ff. De senatoribus, l. *qui indignus*; C. De sacrosanctis eccles., Authent., *multo magis*; ff. Sol. matrim., l. *ex diverso*, § i; C. De epi. et cle., l. *si qua per calumniam*; xxxii, q. v, *si Paulus*; viii, q. i, *si ergo*; vi, q. i, *imitare*; dist. xl, *quælibet*; De elect., *cum in cunctis*. But there seems to be more moral virtue in magnanimity than in fortitude, because it is nobler and greater, as the Philosopher says in Ethics, in the treatise on magnanimity. The first point is clear, namely, that magnanimity is not cardinal, because then there would be more than four cardinal virtues. The solution is this: The whole of human conduct does not turn on fortitude, like a hinge; therefore it is not a cardinal virtue, because the word "cardinal" is derived from "cardo," a hinge. The consequence holds by the argument from etymology, which is valid in law; ff. De rebus creditis, l. ii, § *appellata*; ff. in procemio, § *discipuli*; C. De episc. et cler., l. *decernimus*; ff. De verb. sig., l. *tugurii*; same title, l. *tugurium*^o; ff. De legatis iii, l. *librorum*, § *quod si papyrus*; dist. xxi, *cleros*; xvi, q. i, *si cupis*; and De præbendis, ch. *cum secundum*. The first point is clear. For fortitude has to do only with the dangers of war; but few men pass their lives in the company of such dangers. Therefore, etc. The contrary is supported by the authority of common speech, which places it among the cardinal virtues, and Seneca, who wrote a special treatise on it, agrees with this; and Cicero, in the Rhetoric, divided virtue into these four as cardinal. And this argument from authority is valid in law; C. De sum. trinit. et fid. cathol., Epistola, *inter claras*; C. De bonis quæ liber., l. *cum multa*; ff. De rer. div., l. *in tantum*, § *cenotaphium*.

Why and in what sense the four principal virtues are called cardinal?

[Ch. xxiii.]

As evidence for the solution of the question we must first consider why and in what sense they are called cardinal. Here we must note that, according to Albertus, just as the antarctic and the arctic poles are the hinges on which the heaven moves, and the hinges on which its doors and gates revolve, so, by analogy, those virtues are called "cardinal" on which the whole of human conduct turns, which if a man possesses, he is called simply "good," and without which he is not good. So, too, in my opinion, the lords Cardinals are so called because they are the hinges of the world, on which the whole government of the world is revolved and fashioned; and to them it looks to sustain the whole weight of its moving government and to supply the appointed impetus for its motion. The celestial sphere is content with two poles, and these are enough; they are stable and immovable; they strengthen the order of its motion and do not deviate from the place where the human race is fixed. ✓

Monastic government was content with four hinges, and these sufficed. If, when we look for the cause of number, variety, infirmity, our great distance from the centre, we have no name for it, yet the freedom of the will might supply some kind of cause. But as I have spoken of the Cardinalate in my treatise on Ecclesiastical Censure, I pass by the subject now, and return to discuss the principal question. And because law, as I said, does not fully explain the nature of the cardinal moral virtues, I will give some brief treatment of it in order to explain fortitude.

What is virtue ?

We must know that virtue, as the Philosopher says, is a habit of choice, and as he also lays down in the second book of the Rhetoric, everything that exists falls under choice, but that which may be chosen is threefold.

Of the threefold species of good, and how the cardinal virtues are derived from the good.

[Ch. xxiv.]

The good includes the expedient, the pleasurable, and the honourable ; and these goods may be either sought after or avoided by choice ; and all moral virtues have to do with these three. Let us explain each in turn. And first the good which is expedient, with which virtue is concerned in one of three ways, either by bestowing it, or by receiving it, or by preserving it. A man experiences in himself no acts of choice other than these ; and this inference from experience is valid in law, as is proved in ff. in proœmio, about the beginning ; Authent., col. i, De monachis, about the end ; ff. De legat. iii, l. *si chorus*, § *his verbis* ; C. De vet. iure enucl., l. ii, § *quæ omnia* ; Sext, De elec., *quam sit*. As to bestowing the expedient, this happens in two ways ; for a man bestows either what is his own or what is another's. If he bestows what is his own, then the virtues of liberality and magnificence are practised, and the vices opposed to them, namely, avarice and prodigality, meanness and vulgarity. But if he bestows what is not his own, then he may either distribute it to those to whom it belongs, and this is justice ; ff. De iust. et iur., l. *iustitia* ; and Instit., same title, § *iustitia* ; xii, q. ii, *cum devotissimam* ; or he may distribute it to those to whom it does not belong, and this is injustice, as appears from the converse of the laws just cited, which is a valid argument ; ff. De offi. eius cui mand. est iurisdictio, l. i, § *huius rei* ; ff. Mand., l. *si per procuratorem*, § *ignorantes* ; and De his quæ fi. a prælat., ch. *cum apostolica* ; and De conversatione coniugatorum, ch. *cum virum*. In not rendering things to those to whom they belong a man is said simply to be " bad " ; xiv, q. vi, *si res* ; De usuris, *cum tu* ; ff. De usurp., l. *sequitur*, § *quod autem*. It is clear that justice is cardinal, because

if a man has not justice when he distributes what is not his own, he is simply "bad," whereas liberality and magnificence, which concern the distribution of what is one's own, are not cardinal, because one who distributes his own ill, is not simply "bad," but might well be called "foolish"; and so you have one cardinal virtue, justice, concerned with the bestowal of the good which is expedient. Again, if moral virtue is concerned with the act of receiving the expedient, this may occur in two ways. For a man either receives what is his own or owing to him, or what is another's and not owing to him. If he receives what is his own or owing to him, and from one from whom he ought not to receive it, he sins against liberality and magnificence, yet he is not simply "bad." But if he receives what is another's, he is simply "bad." Hence the law gives remedies against such a person, such as the interdicts, "*Vnde vi bon. rapt.*"; ff. and C., under that title; actions of theft, and condictiones, in accordance with laws and canons which are explained in each case according to the variety of acts. And so by an examination of this second act, namely, the act of receiving the good which is expedient, it appears that justice has a cardinal character, whereas liberality and magnificence have not, since the opposite of the just man is called simply "bad," whereas the opposite of the liberal or magnificent man is not. Again, if moral virtue is concerned with the act of retaining the good which is expedient, this also may happen in two ways; for a man retains and preserves either what is his own, or what is another's. In the first case by retaining what is his own, and giving it to no one, he sins against liberality and magnificence; but such a man is not simply "bad," although, if you press the question, a rich man who sees a poor man dying of want and gives him nothing, sins mortally. The answer may be that he then retains what is not his own, but common, since at a time of such need there should be community of goods, as Clement proves by six reasons, xii, q. i, *dilectissimis*, and Augustine, quoted dist. viii, *quo iure*, and § i. But if a man retains what is another's, he is simply "bad," and is called "unjust," provided that he retains it against the owner's will; and the law provides remedies against him, as to which see above. So in the matter of the good which is expedient, you arrive at one sole cardinal virtue, in distributing, in receiving, and in preserving it, because its opposite makes a man simply "bad." Justice is cardinal; liberality and magnificence are not cardinal; and this is clear.

I said in the second place that there was a second kind of good, the pleasurable, with which moral virtue is concerned; and it is concerned with it in two ways, either by bestowing it or by receiving it. In the matter of bestowing it, there are the virtues which are found in games, when one bestows pleasure on others. And such are friendship, affability, and wit. But these virtues are not cardinal, because they are not necessary to human nature, because many persons are great and virtuous who do not know how to conduct themselves aright in such matters. As to receiving the pleasurable, this also may happen in two ways; for either a man is chiefly concerned with what is

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pleasurable, and then he is called simply "bad," and the quality is called "intemperance"; and I mean that a man is "bad" by exceeding, for the "insensible" man, the man who takes no pleasure, is not simply "bad," but the man who exceeds is; and so you have temperance as a cardinal virtue, because its opposite makes a man simply "bad," and temperance is necessary to human preservation. But if he is simply concerned with what is sorrowful, this again may happen in two ways; for there are some sorrowful things which are apt to stir a man to anger, and then "gentleness" comes in; but this is not cardinal, because it is not necessary that a man should be angry, but he is saved by the act from passing to the second external act of injustice. But if he should pass to the external act, then it would be called injustice. But there are also sorrowful things whose effect is to inspire fear, and then fortitude comes in. For as the man who will not bear what is terrible for the sake of the good of virtue is simply "bad," fortitude is a cardinal virtue. So much as to the pleasurable good.

I said, further, that there was a third good, the honourable, and this is threefold. One kind concerns "cognizant" virtue, and these are the intellectual virtues; and they are knowledge, wisdom, intellect, art, and prudence. Another concerns "interpretative" virtue, involving questions of veracity and falsity. Another concerns "appetitive" art.

Let us take the second form, that which concerns interpretative virtue. I say that the veracity which regards interpretative virtue is not a cardinal virtue, because it does not make a man simply "good," nor does its vice make him simply "bad." For the vice opposed to it is rather "boastfulness." But the boaster is of three kinds: for he may be a simple boaster, one who boasts for the sake of pleasure; or one who boasts for the sake of honour; or one who boasts for the sake of gain. The first kind of boasting alone is directly opposed to veracity; the others approach another kind of vice. For the first man sins only because he is mendacious; but there are two kinds of mendacity: for there is the mendacity which is a simple false signification of the voice, and of that I have said that it is directly opposed to veracity; the other is a false signification of the voice with the intention of deceiving, and that makes a man simply "bad," and falls under the head of injustice. Augustine, in his book "De Mendacio," treats both of these and of other species of mendacity. It is quoted in xxii, q. ii, ch. *primum capitale*. Another form of the honourable good is, as I said, that which concerns appetitive virtue. And it concerns it in two ways. Either "essentially," and such are the moral virtues which I mentioned above. Or "significatively," and such are glory, and worldly goods; and the virtues concerned with this form of the honourable good are magnanimity and , and these are not cardinal virtues. For many men are virtuous who do not desire the honours which they deserve. But if we speak of the honourable good which concerns cognizant virtue, then there are the intellectual virtues: knowledge, intellect, art, prudence. The first three are not cardinal, because they are not necessary to human life; but prudence

is necessary to the good. Nay, it is impossible that any one should be virtuous without prudence ; for prudence regulates the other virtues.

These considerations show us how fortitude, which is the object of the discussion, is a cardinal virtue. And we see how they are four in number, and deducible from the threefold good which may be either sought after or avoided, and the threefold virtue of the soul, namely, justice, temperance, fortitude, and prudence, which last is not only cardinal, but is head and chief among them all. ✓

This has been in some measure a digression ; but I may be excused, because I have not presumed for jurists alone to explain the nature of fortitude, which has been the principal subject of the discussion.

How and in what sense a man may be called " brave " in war.

[Ch. xxv.]

My next question is whether a man may be called " brave," even though he has not been trained in the dangers of death in war. It appears that he may ; for fortitude is necessary to human goodness, since it is cardinal, as I showed in the last question, and human goodness is possible without warlike training. Therefore the consequence is proved by the argument from conjunction ; ff. De neg. gest., l. *atqui natura* ; dist. iv, *denique* ; dist. vi, *nunc de superfluitate*. The first point is clear from the citations to the last question. Also Cicero says that fortitude is the deliberate facing of dangers and endurance of hardships. But this is possible without any warlike act ; and so the consequence is proved by the argument from consequence destroyed, which is a valid argument in law ; ff. De rebus creditis, l. ii, § ii ; C. De furt., l. *apud antiquos*, the word *quam* ; ff. De in integr. restit., [*nemo*] *non videtur*. The Philosopher says the contrary in the fourth book of Ethics. And this is why the oath of the soldier contains a promise not to shrink from death ; ff. Ex quibus causis maior., the last law but one ; and C. book x, De his qui non imple. stip., l. i. For the solution of the question we must observe that the word " fortitude " is commonly used to denote all firmness of mind, and this is a quality common to all the virtues ; for inconstancy of mind meets with reproach and with the reprobation of law ; xxxii, q. v, *horrendus* ; De iureiurando, *quemadmodum* ; ff. De adulteriis, l. *si uxor* ; ff. De decur., the last law but one ; ff. De neg. gest., the last law but one ; De reg. iur., book vi, rule *quod semel*, and rule *mutare*. And in this sense there could be no doubt that a man might be brave without meeting the dangers of war. But the strict meaning of " fortitude " is, a special virtue which inspires a man to meet and await dangers for the sake of avoiding the evil of dishonour. Now the bad is threefold : the injurious which is opposed to the expedient, the sorrowful which is opposed to the pleasurable, dishonour which is opposed to the honourable. But the good of the soul which is honourable is to be preferred to the expedient

and the pleasurable goods, just as the rational soul is to be preferred to the body; xii, q. i, *præcipimus*; xxiv, q. iii, *si habes*; C. De sacrosanctis ecclesiis, l. *sancimus*; De pœnit. et rem., *cum infirmitas*. This leads us to the conclusion that there are three moral virtues which are necessary before a man can be called good and virtuous. There is one which fixes his mind to prefer the honourable to the expedient, and this is justice; Instit., § *iustitia*; xii, q. ii, *cum devotissimam*. Another strengthens his mind to prefer the honourable to the pleasurable, and this is temperance; dist. vi, pal., *sed pensandum*; and De constit., *nam concupiscentiam*. Another strengthens his mind to bear sufferings rather than incur the evil of dishonour, and this is fortitude; C. book x, De athlet., the single law; C. De his qui non implet. stip., l. i, in the same book; vii, q. i, § *hinc etiam*. And this is the fortitude which is the subject of our discussion. And these are rightly called cardinal, because they are necessary to human goodness, and any one of them defends itself and any one of the others. Take an example. A woman tempted to adultery by promises defends herself by temperance; ff. De rit. nup., l. *palam* ii. If she is tempted by terror, she defends herself by fortitude; xxxii, q. v, [*Lucretiam*] *proposito*, § *Lucretiam*, and [ch.] § [*fieri*] *non potest fieri* and [ch.] § *finge, de pudicitia*; xxxiv, q. i, *non satis*. But if she is tempted by rewards, she defends herself therefrom by justice; xii, q. ii, *cum devotissimam*. Fortitude may also be illustrated in this way; for if she hesitates on account of fear, she defends herself by fortitude; xxxii, q. v, ch. [*Lucretiam*] *proposito*, and [ch.] § *finge, de pudicitia*. If she is tempted by the pleasurable sensations, then she defends herself by temperance; xxxii, q. v, *non potest*, and ch. *nec solo*, and ch. *qui viderit*, and ch. *non mæchaberis*. If by rewards, then she defends herself by justice, because it is as unjust to sell the good which is honourable as that which is spiritual; i, q. ii, *quam pio*; De simonia, throughout. If she is tempted by false reasons, then she defends herself by prudence; and so one of the cardinal virtues strengthens her mind to prefer the honourable to the expedient, namely, justice; another, to prefer it to the pleasurable, namely, temperance; another, to bear sorrows for the sake of guarding the good and excluding the evil of dishonour, namely, fortitude. But prudence regulates the others, and so ought to be included among the cardinal virtues.

It is further to be noted that war is undertaken in two ways.

[Ch. xxvi.]

It is undertaken in one way because of an act of war on one side or the other; ff. De captivis, l. *in bello*, and l. *postliminium*; C. book xi, De gladi., the single law. It is undertaken in another way because of an expectation of bodily danger, even without actual attack, but only if there should be a danger which might probably be resisted; otherwise it would not be a war, just as it is not war when a robber is hanged or any one else is brought to justice.

If war is undertaken for an actual attack on one side or the other, fortitude is not concerned with those dangers only, for then it would not be cardinal, since many men are virtuous who have had no training in such dangers. But if it is undertaken in the second way, then fortitude is concerned with those dangers generally, as we say of a woman who faces dangers in order to protect her chastity. In her case there is no war in the first sense, but in the second there is, and yet fortitude is present. We must note, however, that fortitude is not concerned with all warlike dangers. For if one man attacks another and defends himself, he is not brave; otherwise we should have to say that a dog is brave and shows fortitude. But when a man faces warlike dangers for the sake of avoiding the evil of dishonour, then he is brave. Hence the Philosopher says that a man is not made brave by necessity; hence, also, cause xxiii, q. iv, *Nabuchodonosor*, and ch. *de Tyriis*; De Pœnit., dist. ii, *sic enim*. Thus we reach a solution of the question proposed when we ask whether fortitude is concerned with the dangers of death and war; and we must say that it is not, as was illustrated in the case of the woman. In a second sense, inasmuch as the extreme act of fortitude is concerned with the dangers of death, we must say that it is, because virtue is concerned with what is difficult. In a third sense, inasmuch as it inclines us to meet the danger of death, should occasion arise, we must say that it is, because virtue extends to the limits of a man's power; De Cœlo et Mundo, book i.

Which is the chief act of fortitude in war?

[Ch. xxvii.]

But I ask, which is the chief act of fortitude in those who are at war, awaiting the enemy, or attacking them? And it seems that attack is the chief act of fortitude. Firstly, because, as the Philosopher says in the second book of the Ethics, in the treatise on liberality, it is more virtuous to give than to receive. Also it is written in Ecclesiasticus, ch. iv, "let not thine hand be stretched out to receive, and closed when thou shouldest repay." Hence the text, "it is more blessed to give than to receive"; xvi, q. i, *prædicator*; and De celebr. missar., *cum Marthæ*; De donat., ch. i. Therefore, by analogy, it is more virtuous to attack than to await, because one who attacks gives, and one who awaits receives. Moreover it is more virtuous to do well than to receive well, as the same Philosopher shows. This is proved thus: For if it is better to do than to suffer in the virtues generally, it follows that it is better to do well than to suffer well. The consequence holds by the argument from connexion, which is a valid argument in law; ff. De neg. gest., l. *atqui natura*; dist. iv, *denique*; dist. vi, *quia de superfluitate*. But he who attacks gives well, he who awaits receives well; therefore it is more virtuous to attack. Moreover, it is better to do well than not to do ill; and in this connexion it is not

enough to abstain from evil, unless we also do good ; for this act of doing good leads to a better end, since in actions it is the end that is weighed, and from that the action takes its name. The consequence holds by the argument from the end, which is valid in law ; ff. De ritu nupt., l. *si quis* ; ff. De iur.isci, l. *non intelligitur*, § *si quis palam* ; ff. Communia præd., l. *receptum* ; ff. De auro et arg. legat., l. *et si non sint*, § *perveniamus*. But to attack is to do well, to await is not to do ill, that is, not to flee ; therefore it is more virtuous to attack than to await. Further, that which is more difficult is more virtuous. For even an opinion on a law is only given on a difficult and doubtful matter ; ff. De Carbon. edicto, l. *quod Labeo* ; and ff. Ad municipalem, l. i, at the end. But to attack is more difficult than to await ; for a tired man can await, but he can not attack. The major is proved by the same Philosopher, in the treatise on fortitude, for an act of fortitude is specially concerned with what is difficult and terrible. Moreover, that which is more lovable is more virtuous ; for acts of virtue are by their nature lovable, as the same Philosopher says ; and this is proved by De Pœnit., dist. ii, *ergo*, and ch. *corpus*, and ch. *proximos*. But to attack is more lovable. And observe how it brings more advantages to the commonwealth, and more things in the same genus are preferred to fewer : Authent., De consan. et uter. frat., at the beginning ; De sent. excom., *cum pro causa* ; iii, q. iv, *Engeltrudam* ; De offi. delegat., *prudentiam*, at the beginning ; because to expel the enemy is more useful than to await them. Moreover, a thing which is more praiseworthy is more virtuous, because moral virtue is a praiseworthy good ; but to attack is more praiseworthy than to await. For, as a rule, those who attack are more praised than those who flee. To the contrary is the text of the Philosopher in Ethics, book iii, in the treatise on fortitude, where he says that the greater act of fortitude is to endure. Albertus and Custratius hold the same opinion on the point.

By way of evidence on this question, we should observe that, according to the dictates of right reason, it is not right always to attack, nor always to flee, nor always to await ; for sometimes it is expedient to attack, sometimes to flee, sometimes to await. From which it appears that acts of fortitude are threefold ; namely, attack, flight, and waiting. And that a brave man should sometimes flee is obvious by reason, for one should flee from dangers which are beyond a man's strength. For if one man alone should wish to attack a thousand, or to await their attack, he would not be brave, but audacious and rash, as the same Philosopher says in the same passage. Acts of fortitude, then, are threefold ; namely, attack, flight, and waiting. And among these the least is flight. This is proved thus : For an act which is less difficult than others is the least of those acts, since art and discipline are concerned with difficult things. But to flee is easier than to attack or await. Therefore, &c. Moreover, an act which is assimilated to a worse vice is the least act. This is proved by the argument from extremes, which is valid in law ; ff. Communi divid., l. *arbor* ; and ff. Si quis ius dic. non obtemp., l. i ; and ff. De stat. hominum, l. *quæritur*. So it is in the case proposed. For by flight

a man is assimilated to fear, which is a worse vice than audacity, as the same Philosopher says in the same passage.

Secondly, I say that waiting is the more important act. This is proved ; for it is more virtuous to do good aright than to receive it aright. Therefore it is more virtuous to suffer evil aright than to do it aright. The consequence holds by the argument from opposites, which is valid in law ; ff. De act. emp., l. *Iulianus*, § *procurator* ; ff. De instit., l. *sed si pupillus*, § *si institoria* ; ff. De verb. sig., l. *hæc verba*. But one who attacks does evil rightly to the attacked, whereas one who awaits an attack, suffers evil rightly from the attacker. Further, an act which is more difficult is more important. This has been proved above many times. But waiting is more difficult than attacking. This is proved thus : For if an attack is made, it is made after the manner of one who is stronger, and with the hope of escaping ; otherwise, if there were no hope of escape, right reason would not dictate an attack. But in waiting, it is the less strong who awaits the stronger. But it is more difficult to conduct oneself rightly in face of a stronger than in face of one less strong, as is obvious. This is confirmed thus : For in waiting, one has to control great fear amid bodily sufferings. But in attacking, one need not control so great a fear. Therefore, &c.

Further, waiting and enduring denote continuance and perseverance, and in the genus of what is good that which is more continuing is better ; De Pœnit., dist. iii, *irrisor* ; De Pœnit., dist. ii, *pennata*, and ch. *non revertabantur* ; ff. De in rem vers., l. *si pro patre*, § *et verum*. But attack denotes an impetus of short duration proceeding from anger ; ff. De adulter., l. *si adulterium*, § *imperator* ; C. same title, l. *Gracchus* ; and ff. De reg. iuris, rule *quod calore*.

Moreover, waiting brings one face to face with the dangers of death, and they are then difficult and fearful, as the Philosopher says in Rhetoric, book ii. Therefore, &c.

We infer, then, that waiting is the more important act of fortitude, although the vulgar, who judge incorrectly, are of the contrary opinion. But if what I said about flight being an act of fortitude appears inconsistent with what I wrote above in this treatise, in the article on the duties of a general and soldiers, where I said that soldiers ought to keep the oath by which they have sworn not to flee, &c., the solution is clear from what has already been said ; for where dangers are beyond a man's strength, he ought to flee ; xxiii, q. iv, *displicet* ; John, ch. viii, Matthew, ch. x, quoted vii, q. i, § *hoc observandum*. But where dangers are not beyond a man's strength, but there is some small hope, then what I have just said holds. The answer to the citations to the contrary is clear if we run through them singly ; but we must add one thing, which is, that the vulgar applaud and love those who attack more than those who wait. Hence what the Philosopher says on the same subject, that nothing prevents hired soldiers being more useful in states than brave men, for the former barter their life for a trifling gain, and flee and attack without the dictation of reason, whereas brave men neither flee nor attack without the dictation of reason.

How many kinds of fortitude are practised in war?

But I ask, how many kinds of fortitude are practised in war? Solution: There are six likenesses of true fortitude, which is a moral virtue between audacity and fear, and these six are practised by soldiers in war.

The first is that which inspires men to attack manfully in war for the sake of glory and honour, seeing that men applaud those who do so, and blame the timid; and on this see C. book xii, *De re milit.*; ff. *Ad leg. Aquil.*, l. *qua actione*, § *in colluctatione*; *De pub. iudic.*, throughout.

The second, which is called "political," is that which makes men brave because of the fear of bodily or pecuniary punishment, which is imposed on the timid and those who flee in war; and this is called "political," because it is found among citizens, and such fortitude is servile; *De Pœnit.*, dist. ii, § *sicut secta*.

The third is that which is called "military," by which men are brave because they know the arts of war, like the Teutons and other expert mercenaries. Experience, the mistress of things, induces this kind of fortitude; ff. *De leg. iii*, l. *servis*, § *ornatricibus*; and Sext, *De elect.*, ch. *quam sit*; and as the Philosopher says in the treatise on fortitude, mercenaries fight with others like armed men with unarmed. And they are ready to attack and ready to flee. To-day, however, they extricate themselves more easily, because they lift a finger and pull down visors, and they surrender, and are dismissed at once, as is their custom among themselves.

The fourth is the fortitude inspired by rage; for rage is a thing that impels men to danger, and it is sometimes helpful in war, because men are bolder, and the impulse of anger induces this kind of fortitude; ff. *De adulter.*, l. *si adulterium*, § *imperatores*; and C. same title, l. *Gracchus*; and ff. *De reg. iuris*, l. *quod calore*.

The fifth is that which hope inspires; for some men attack manfully because of the hope of victory, for in them the hope of power is stronger than the sensitive reason; *De constit.*, *nam concupiscentiam*; dist. vi, *sed pensandum*.

The sixth arises from ignorance; for men sometimes attack and await in ignorance of the dangers which threaten them, who would nevertheless flee if they knew of them. In this case a man is like an infant, and does not see what he is doing; C. *De fals. mone.*, l. i; ff. *Ad leg. Corn. de sica.*, l. *si infans*.

These are the kinds of fortitude ordinarily practised by soldiers in war. But if you wish to know which among them approaches most nearly to virtue, you should observe that they are all merely likenesses of true fortitude; for in true fortitude, as in any virtue, the act must be done consciously. For there is no virtue in those who act in ignorance, because prudence, which is a state of the intellect, ought to control every act of virtue. Secondly, virtue must be chosen. Thirdly, it must be chosen because of its own intrinsic goodness, and not because of any extrinsic good. Fourthly, the act must be steadfast and

lasting. Fifthly, it must be done gladly. Sixthly, it should be difficult, for art concerns difficult things. All these qualities are required in true fortitude, whether in attacking, or in awaiting anything terrible and difficult. These considerations show us which of the above more nearly resembles true fortitude, and which does not. For all except the last resemble it in being conscious, and so the last is least like it in this point. In the point of being deliberately chosen, the others agree with true fortitude, except that which arises from rage. But in the need for being chosen for its intrinsic goodness, they all fall short of true fortitude ; for the first is chosen for an extrinsic good, namely glory, another for the sake of avoiding a penalty, another for gain and pay, another for hope of victory. But the first, or " political," fortitude, which is chosen for honours and glory, is nearer to true fortitude, because of its more honourable end. For honours are significant of the virtues, and such men do more towards the public good, for they devote themselves more manfully to wars, as in the example given by the Philosopher, of Hector, who conducted himself thus in affairs of war.

Whether a brave man in war ought to await death rather than to flee ?

[Ch. xxviii.]

Thirdly, I ask whether a brave man in war ought in some cases to await death rather than to flee from the war, when by flight he might escape it. And it seems that he should not wait for death ; for one ought to choose that which is more pleasurable rather than that which is less so, as the Philosopher says in Rhetoric, book i. But life is more pleasurable than death ; therefore, flight and life should be chosen, rather than waiting and dying. The Philosopher seems to say the contrary in Ethics, book iv, in the treatise on fortitude, and in book iii, in the treatise on the voluntary and the involuntary, and also in the treatise on magnanimity, where he says that a man should die rather than commit a base act.

Solution : We must observe for our guidance that the question may have a double foundation. One is the foundation of truth and faith, based on our belief in another life of blessedness. And according to this foundation the question would not admit of serious doubt ; for if a man were fighting against the infidels, and if his flight would cause the death of many of the faithful and save himself alone, then he should rather choose to wait and die. And the reason is, that by fleeing he wins his bodily life, whereas by waiting and meeting the death of the body, he wins the life of the soul, which is without comparison nobler, and therefore to be chosen.

The second foundation of the question concerns those who live according to the law of nature, without belief in a future life ; and then the question admits of doubt and various opinions. Some say that the death to be expected may happen in many ways. In one case it may be quite certain that death must happen if a man waits, and there may be no hope of safety except in

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flight. In another case, although there may be some probability of death, yet there may be some hope of life without flight. In this second case they say that a man should observe the authority of Aristotle and other philosophers, who say that he ought rather to die, that is, to fight like a man. But in the first case they say that he ought in no wise to wait for death. They prove this by the argument that of two ills the less should be chosen ; dist. xiii, *nervi* ; and this is a first principle of morals. But flight is a less ill than waiting to die. That it is a less ill is proved by the argument that a thing which causes the loss of fewer good things is a less ill than that which causes the loss of more ; but death destroys everything ; Authent., De nupt., § *deinceps* ; and Physics, book ii. In flight, the only good thing lost is moral fortitude. Therefore, &c. Moreover, if it were better to die, it could only be because to die is an act of virtue ; but this is false, for an act of virtue either is happiness, or tends to an act of happiness. But death destroys happiness. Therefore, &c. Moreover, if in this case death ought to be chosen, it would be because fortitude, which is a moral virtue, inclined to this course. But this is false, for moral virtue does not tend to the corruption of nature, but rather to its conservation. For laws have been made with this object ; dist. iv, *factæ sunt* ; but death tends to destruction ; Authent., De nupt., § *deinceps*. Moreover, if a man ought rather to choose this course, it would be for the sake either of his own good or of another's. It is not for his own, because death extinguishes all good, as was shown above. It is not for another's, because he cannot win for another as great a good as he loses for himself, since he ought to love himself more than others ; C. De servit. et aqua, l. *præses*. The conclusion is thus confirmed. For it appears that the most virtuous soldiers used to flee in war, without sacrificing truth and faith, as in the time of Charles the Great.

Others hold exactly the opposite view, namely, that a man ought to wait and die rather than flee. And they prove it thus : For any man knows that he must needs die ; therefore, if he dies bravely, he only loses that in which he believes a present to differ from a future death. But these two do not differ in any matter of losing or preserving the good things of virtue, but only in retaining them for a longer or shorter time. They also argue that a thing whereby more good things are acquired and fewer lost is more to be chosen ; and so it is in the case proposed. Therefore, &c. This minor premise is proved thus : For if a man dies, he wins an act of fortitude, which is most noble. If he flees, he wins nothing, save a continuance of what he had before as long as his life lasts, and so he wins time. The conclusion is thus confirmed. For it is certain with regard to the pleasures of the body that men would rather choose to live a short time pleasurably than a long time in pain ; therefore this should rather be chosen where the question concerns the pleasures of the soul.

I believe the first opinion to be true, because, as I said in another article, the acts of fortitude are attack, flight, and waiting. For a man should not always be pressing on, nor always fleeing, nor always waiting ; he should rather follow the dictation of reason.

Whether a soldier should be punished with death, who bravely charges the enemy with his company and utterly routs them, contrary to the commands of the general ?

[Ch. xxix.]

Fourthly, I ask this : Suppose the general of an army has commanded that no one should charge the enemy on pain of death. A certain very active soldier, with a large company under him, contrary to the general's command, charged the enemy, and by his activity utterly routed them. The question is, whether he should be punished with death. And it seems that he should ; for the text says that in war one who does a thing forbidden by the general, or disobeys his commands, is punished with death, even if what he does turns out well ; ff. De re militar., l. *desertorem*, § *in bello*. This is proved by the laws which secure that persons bound to obey should be held to obedience ; ff. Mandati, l. *si remunerandi*, § *si [pignus] passus* ⁽²⁾, and l. *sed Proculus* ; ff. Ad Macedon., l. *sed etsi*, § ii ⁽³⁾ ; ff. Ad leg. Aquil., l. *si servus servum*, § *et si puerum* ; C. De neg. gest., last law ; and similar passages. It is thus confirmed : For an evil is not excused because of a good which follows from it ; dist. lvi, *undecunque* ; De Pœnit., dist. i, *non sufficit*. It is also confirmed thus : For acts are not to be judged by the event ; xv, q. i, *illa*, and ch. *non est* ; xxiii, q. v, *de occidendis* ; ff. De neg. gest., l. *sed an ultro*, § i ; ff. Mand., l. *qui mutuam*, § *sumptus* ; ff. De contraria tut., l. iii. Therefore the signal event in this case will not be considered, but rather the preceding obedience.

Arguments to the contrary are these : A penalty which ought otherwise to be imposed on one who attempts a thing forbidden by a law, or by the command of the prince, is remitted for the sake of skill and a great service effectively rendered. This is proved by ff. De pœnis, l. *ad bestias* ; xxii, q. ii, ch. *quæritur cur Patriarcha*.

Solution : I hear that the lord Richard Malumbra determined that an offender should escape, for his great skill, the penalty imposed by the said law *ad bestias* ; and the ch. *quæritur cur Patriarcha* might also be quoted. Yet I do not think that this opinion is true ; nay, it is obviously contrary to the text ff. De re militari, l. *desertorem*, § *in bello*. Nor do the laws cited to the contrary conflict ; for it is one thing that a man should not incur a penalty imposed by a law or by a man, another thing that after the penalty has been incurred it may be remitted by the prince. Those laws do not prove that the penalty is not incurred ; but they rightly prove that it may be remitted by the prince, and so they assume that it has been incurred, as both texts prove, if properly examined.

Whether quarter should be granted to the general of a war when captured ?

[Ch. xxx.]

Fifthly, I ask this : Suppose the general of a war is captured by the enemy, should quarter be granted to him, or should he be punished ? And it seems

that quarter should be granted, by xxiii, q. i, ch. *noli*, at the end. For example, the text, "as violence is rightly meted out to one who fights on and resists, so quarter is granted to the vanquished or the captured." This is proved, for a text says that one is bound to spare one's enemy; ii, q. v, *quanto*, at the end. For example, the text, "because, just as it is right that we should be severe on those who persist in their contumacy, so we ought not to refuse pardon to the humbled and the penitent."

An argument to the contrary is that a captive becomes the slave of the enemy; ff. De captivis, l. *hostes*; and ff. De verb. significatione.

Solution: I believe the first statement to be true, namely, that quarter should be granted to one who humbles himself and does not try to resist, unless the grant of quarter gives reason for fearing a disturbance of the peace, in which case he must suffer. This is proved by the text in ch. *noli*, at the end, where it says, "especially when disturbance is not feared"; and Hugo and the Archdeacon explain that "especially" is used for "only," so that the sense of the passage is that quarter is to be granted only when disturbance of the peace is not feared, and otherwise not. And it is said that on that interpretation Charles caused Conradin to be beheaded.

Of those who are bound to participate in war, and of those who participate without being bound.

[Ch. xxxi.]

Fourthly, it remains to consider those who are bound to participate in war, and those who participate without being bound.

Whether vassals are bound to participate at their own expense, when a lawful war is begun by their lord?

And I ask, first, whether, if a lord begins a lawful war, his vassals are bound to join in it with arms and horses, and at their own expense. And it seems that they are, because they are bound by the force of their oath to help their lord; xxii, q. v, *de forma*. Innocent, in De iureiur., ch. *sicut*, holds that they are not bound, unless they have undertaken this obligation by special agreement, since they are not bound to render personal services. Conclude on this point that vassals are not bound by law, except to the duties contained in xxii, q. v, ch. *de forma*, unless they have undertaken the obligation by special agreement.

Whether the subjects of a baron, who begins a war against his king, are bound to help the baron against the king ?

[Ch. xxxii.]

Secondly, I ask this : Suppose a baron of the King of Spain begins a war against the king himself, and commands all his men to help him in the war against the king, are they bound, when they have sworn to help him against all men ? And it seems that they are, for it is a serious thing to break faith ; Qui cleri. vel voventes, *veniens*, and the following chapter ; ff. De consti. pecunia, l. i. Also general words are to be understood generally ; ff. De legat. præstan., l. i, § *generaliter*. Also because an oath is binding, unless one is absolved from it ; xv, q. vi, chs. ii and iii. The contrary is true ; for a baron who begins a war against the king breaks the *lex Iulia maiestatis* ; ff. Ad leg. Iul. maiest., l. i, and l. ii ; vi, q. i, § *verum*, the words *quisquis cum militibus* ; dist. lxxix, ch. ii. For the King of Spain is the prince in his own kingdom. Also, one who helps another to sin does not give help at all ; xiv, q. vi, *si res* ; nor would his command excuse them ; ff. De oblig. et act., l. *servus* ; xi, q. iii, *non semper*, and ch. *qui resistit*, and ch. *si dominus*. Nor does the oath bind to this, because it was not meant to be a bond of iniquity ; xxii, q. iv, *inter cetera* ; Sext, De iureiur., ch. i ; and the notes to De iureiurando, ch. *petitio*.

Whether subjects are bound to help first a baron who begins a war against another baron, or the king who begins a war against another king, both commands being received at the same time ?

[Ch. xxxiii.]

My third question is this : A baron of the King of Spain begins a war against another baron, and the King of Spain begins a war against the King of Granada. The baron summons men to help him ; but the king summons the same men to help him ; and the summonses are simultaneous. Whom are they bound to help first ?

It seems that they should first help the baron, for they are his subjects by reason of fealty and by reason of jurisdiction ; Authent., coll. vi, De quæstore, § *si vero*. But they are the king's subjects only by reason of his general jurisdiction, and so the two reasons prevail over one ; Authent., De consang. et uter. frat., § i ; Sext, De re iudic., *cum æterni* ; dist. xiii, can. i.

To the contrary is the argument that persons summoned by the king are summoned to a higher tribunal, and so this summons should be preferred ; ff. De re iudic., l. *contra pupillum*, last section ; dist. xviii, *si Episcopus*. Also because the king summons them for the common good and the defence of the crown, and so they are bound by the law of nations to obey ; ff. De iustitia et iure, l. *veluti* ; dist. i, *ius gentium* ; xxiii, q. iii, *fortitudo*, and q. viii, ch. *omni*, and ch. *si nulla*. For in defence of one's country it is lawful to kill a father ; ff. De relig. et sumpt. fun., l. *minime*. And this is the true view.

Whether the non-liege vassal of two lords, summoned by both at the same time, is bound to help both, or one, and if so, which ?

[Ch. xxxiv.]

My fourth question concerns a non-liege vassal of two lords, a case which may arise by reason of different fiefs ; Sext, De suppl. negl. prælat., *grandi*. If each of the lords requires him at the same time to help him in war, is he bound to help both, or one, and if so, which ?

It appears that he need help neither, since the two claims cancel one another by their coincidence ; ff. De usufr., l. *quotiens* ; De Pœnit., dist. i, § *hoc idem*, words *Christus ait* ; xxi, q. i, ch. i.

It appears that he must help both ; otherwise he will lose his fief, because a difficulty of performance on the part of the promisor does not discharge an obligation ; ff. De verb. obl., l. *continuus*, § *illud*. Also, a man can serve two masters ; ff. De operis libert., l. *duorum*. Some say that he may choose, on the analogy of the slave of two masters, who, if he sees both masters being killed, may help which he likes ; ff. Ad Silianum, l. *si quis in gravi*, § *si cum omnes*. Others say that he must help that master to whom he first took an oath ; Vsus Feudorum, De prohib. feud. alien., l. *imperialem*, § *illud* ; ff. Locati, l. *in operis* ; C. Qui potiores in pign. hab., l. ii. For he is bound to keep the earlier fealty ; dist. i, *quia sanctitas tua* ; Qui cleri. vel vov., *veniens*.

It is safer, however, for him to serve the first personally, and the second by means of a substitute, if the nature of the fief allows this ; C. De caduc. toll., the single law, § *sin autem*. Nor does it matter that his oath to the second saved his fealty to the first, which is of the nature of a non-liege man, because by serving the second by means of a substitute he does not injure the first, which was what the oath to the second saved.

Whether a vassal is bound to help his lord against his father, or a father against his son ?

[Ch. xxxv.]

My fifth question is whether a vassal is bound to help his lord against his father, or a father against his son. The gloss on xxii, q. v, ch. *de forma*, puts the question and holds that he is. For a son is bound to his father only by the tie of nature, but a vassal is bound to his lord by the tie of an oath ; see the chapter *de forma*, above cited. The text in Vsus Feud., ch. *quemadmodum feud. amit.*, proves this. The gloss on xi, q. iii, ch. *quoniam milites*, somewhat inclines to the contrary view. I should think that the quality of the assistance to be rendered should be considered.

Whether a citizen of two states is bound to help one against the other ?

My sixth question is whether a citizen of two states is bound to help one against the other. Solution : Apply what was said of a vassal with two lords.

Whether a vassal summoned by his lord is bound to follow him in parts beyond the sea to fight against barbarians ?

[Ch. xxxvi.]

My seventh question is this : A lord wishes to go to remote parts, say beyond the sea, to fight with the barbarians ; is a vassal, summoned by him, bound to follow him to the war ? Solution : If the lord is of such status and condition that his predecessors and he himself have been accustomed to make such expeditions, and his vassals to follow him, then the vassal is bound, on the analogy of the freedman, who is bound to render the usual services ; ff. De operis lib., l. *opere*, and the last law but one ; ff. De pign. act., l. [qui] *vel universorum*. A reasonable allowance for moderate expenses, however, will be made by the lord. But if his status is such that he cannot and has not been accustomed to make such expeditions, then the answer is the contrary ; ff. De operis lib., l. *quod nisi*, last section ; ff. De arbit., l. *si cum dies*, § *si arbiter*. This subject is also treated in Speculum in Speculo, tit. De feudis, § *ipsum*.

Whether slaves are bound to follow their lord to war everywhere ?

[Ch. xxxvii.]

My eighth question is whether slaves are bound to follow their lord to war everywhere. About them there is no doubt, since the lord has full power over them, provided he does not treat them with excessive cruelty ; ff. De his qui sunt sui vel alien. iuris, l. i and l. ii.

Whether freedmen, when summoned, are bound to follow their patron to war ?

[Ch. xxxviii.]

My ninth question concerns freedmen. Solution : Freedmen are bound to render the usual services, and unusual services cannot be imposed on them ; ff. De operis lib., l. *quod nisi*, § *si vag.*⁽¹⁾ ; ff. De procur., l. *sed haec*, § ii.

Whether cultivators, when summoned, are bound to follow their lord to war ?

[Ch. xxxix.]

My tenth question is whether cultivators are bound to go to war when summoned by their lords. Solution : Cultivators are divided into "ascripticii" and "censiti." Those who are bound to the soil by a written document are called "ascripticii," and two documents are concerned, one to constitute, the other to prove, their status. By the first they promise the lord of the soil never to depart from it ; by the other they confess themselves "ascripticii" ; and as to these documents see C. De agric. et censitis, l. *cum scimus*. And between these and slaves there is practically no difference ; C. same title, l. *ne diu*. And I say "practically," because they do differ in this, that a slave may be alienated either with his "peculium" or without ; l. *ne diu* ; an "ascripticius," only with the soil ; C. same title, l. ii. Also, "ascripticii" may be ordained, even without the consent of their lord, in the possessions to which they are "ascripti" ; Authent., De sanct. episc., § *ascripticios* ; but slaves may not. Also, "ascripticii" contract a marriage, with the knowledge and silence of their lord, without changing their condition ; C. De agricol. et censitis, last law ; but slaves who contract marriage, with the knowledge and silence of their lords, are freed from the servile condition ; Authent., De nupt., § *si vero*. From this it is as clear as day that the right which lords have over "ascripticii" is a right related to the possessions to which they are "ascripti." And so it appears that, if they are summoned by the lord to extraneous personal services, they are not bound to obey, except by special agreement to that effect. "Censiti," however, are those who are bound to render something certain annually ; C. Quib. caus. coloni, l. ii. They also differ from "ascripticii" in this, that "ascripticii" are bound to render something uncertain, for instance, a third or a fourth of the fruits, whereas "censiti" are bound to render a thing certain ; and our conclusion in their case is as above. We may infer from this that neither "coloni" nor "inquilini" can be compelled.

*Whether a lord may summon those who are allied with him
to help him in war ?*

[Ch. xl.]

My eleventh question is whether a lord may summon those who are allied and leagued with him to war, so that they will be bound to help him. Solution : Allies are fully free, although they are bound to certain things by agreement ; ff. De captivis, l. *non dubito*. In these cases, however, the agreement and the mode of agreement must be considered and observed to the letter ; ff. Depositi, l. i, § *si convenitur* ; and De pactis, l. i.

*Whether those who are subjects by reason of jurisdiction only
are bound to participate in war ?*

[Ch. xli.]

My twelfth question concerns those who are subjects by reason of jurisdiction only, and are not vassals. Solution: They are bound to participate, nor will they have an action to recover their losses, because they act under an obligation. There is an exception to this rule in the case of certain persons who are excused from personal services, of whom some are excused on the ground of age, as minors and old people; C. Qui ætate, in red and black; some by infirmity; C. Qui morbo, throughout; some by the number of their children; C. Qui numero liber., throughout; some because of their profession; C. De profess. et medic.; some by their sex, as women, and so on. Otherwise the rule stands.

Of persons not bound, who voluntarily participate in a war.

[Ch. xlii.]

What I have said relates to persons who are in some sort bound. It remains to consider persons fully free who are summoned to war. In this inquiry we must observe that we confine ourselves to persons who go to war from no necessity or obligation, for those who go under obligation have been treated above. Some go out of mere generosity; some because they are bound to return a service; some to seek and win glory in war; some because they let out their services as mercenaries, if this can be called a contract of letting; some go simply in the hope of booty, like the so-called "saccomanni," persons who seize "manu," with the hand, and carry off in a sack; and these persons we must consider. And first let us take the first class, those who go absolutely voluntarily.

*Whether those who voluntarily participate place him in whose service they go
under an obligation to themselves, &c. ?*

And my first question is, whether those who voluntarily participate in a war place him in whose service they go under an obligation to themselves, if they incur loss; as, for instance, if they lose their arms in the war, or horses, or are taken prisoners, even in going to or returning from the war. Solution: Here we must observe that voluntary participators are sometimes first summoned and asked by their lords; sometimes they join on their own motion, without being so summoned. If they are summoned to go by a lord, then they have an "actio mandati" against him, if, as I said above, they happen to lose something, unless it appears that they are acting from a sense of duty, or humanity, or relationship; xxiii, q. iii, *non in inferenda*; xi, q. iii, *si dominus*, and ch. *Iulianus*. If you object, and say that the lord is not bound, because such loss is caused by accident, for which no one is liable, De homici., *Iohannes*;

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C. De pign. act., l. *quæ fortuitis*, the answer is that it is an accident which might have been and ought to have been foreseen, because such events are probable in wars, because the issue of war is doubtful ; and so Innocent notes in De iureiurando, ch. *sicut*.

Whether a borrower is liable to the lender to replace horses and arms lost in war ?

[Ch. xliii.]

My second question is, What if a man lends another arms and horses to go to war, and they are lost ; is the borrower liable to the lender ? And it seems that he is, by analogy with the last argument, since this, too, might have been foreseen, as above. Solution : In this case he is not liable, according to Innocent ; and the reason of the difference is that in this case the borrower did not exceed the terms of the contract, because he only put them to the use for which the contract was entered into, and so he is not liable ; ff. Commod., l. *si ut certo*, § *sed interdum*. But in "mandatum," although a man might have known beforehand that he might probably lose them, yet he knew that an "actio mandati" would lie, because that follows from the nature of the contract. And this is always the rule, unless it is excluded by a special agreement.

Whether a hirer is liable to a letter to replace horses and arms lost in war ?

[Ch. xliv.]

My third question is, What of one who lets out horses and arms ? if they are lost in war, will the letter have an action against the hirer ? Solution : Apply what I said of the lender ; the letter will have no action, because the hirer hired them for this purpose, and he has not exceeded the terms of the contract ; ff. Locat. et conduct., l. *si quis domum*.

*Whether, if one man summons another to a war, and the other is robbed on his way to the war, the summoner can sue the robber by the
"actio vi bonorum raptorum" ?*

[Ch. xlv.]

My fourth question is, What if a man who has been summoned to a war is robbed of his arms, horses, and other things on his way to give assistance ? I have said that the "mandator" is liable to the "mandatarius," but has the "mandator" an action "vi bonorum raptorum," or an action of theft, against the robber ? It appears that he has, because his interests are affected by the robbery, inasmuch as he is liable to the "mandatarius" in an "actio

mandati." Solution: These actions are not competent to him against the robber. And the reason is that the "actio vi bonorum raptorum" is only competent to the person upon whose goods the robbery was committed; ff. Vi bon. rapt., l. ii, § *hac actione*. For the "actio vi bonorum raptorum," or the action of theft, is only competent to one who had ownership, or possession, or detention, or some right in the thing, as has one to whom the thing was pledged and not yet delivered; ff. De præscript. verb., l. *si gratuitam*, § *si quis*; ff. De furt., l. *si is qui rem*, and l. *is cui*. The persons robbed, therefore, have these actions, but they will be able to sue the "mandator" by an "actio mandati," and the "mandator," when he has paid, will be able to call for a cession of the actions against the robber, and then, after the cession, he may sue, as a "procurator in rem suam"; C. Mand., the last law but one, and the last law. This is also the view of Innocent in the chapter above cited, De iureiurando, *sicut*.

Whether those who are not summoned to a war, but go of their own motion, place him in whose service they go under an obligation to themselves?

[Ch. xlv.]

My fifth question regards those who go without being summoned, and of their own motion. Solution: If they go with the intention of making a gift of their services, for example, from a sense of duty, or humanity, or relationship, the case is clear. Such persons will not have an action; xxiii, q. iii, *non in inferenda*; xi, q. iii, *si dominus*, and ch. *Iulianus*. But if they go with the intention of putting the person in whose affairs they engage under an obligation, then they will have the "actio negotiorum gestorum"; and it is enough if the enterprise has been effectively begun; ff. De neg. gest., l. *sed an ultro*.

Whether those who are not summoned to a war, but go of their own motion and make an effective start, place the person in whose service they go under an obligation to themselves, even though he may object to and forbid their going?

[Ch. xlvii.]

My sixth question is, What if persons go to a war of their own motion, but after being expressly forbidden by those to whose assistance they go? Will such persons have an action, if they effectively begin the service, and if they complete it successfully, to carry the question further? It appears that they will, on the analogy of one who drags an unwilling person out of a falling house; xxiii, q. iv, *ipsa pietas*. Also, a benefit may be conferred on a man against his will; dist. xlv, *et qui emendat*. Also, to forbid a man to help one seems to show that the other was mad; ff. De condi. instit., l. *quidam*; De Pœnitentia, dist. iii, *adhuc instant*; so the gloss holds of the doctor who treats a person against his will. This is noted in dist. lxxxiii, in the summary. I

believe the contrary in the present case, because of C. De neg. gest., the last law ; but I do not on that account reject the gloss ; I believe that it is true of the sick man and the doctor, because a sick man is presumed to be mad, if he does not wish to be absolutely cured. But a man who forbids another to come to a war for his assistance, is not presumed to be mad, for it is possible that he does not trust him, and suspects that he may betray him. Nor do I believe that the gloss would apply to a case in which a sick man was anxious to be well healed, but did not wish for that doctor, but for another ; then, in my opinion, the gloss would not apply, nor do the passages cited above prove that it would.

So much for those who participate voluntarily.

Of those who participate because they are bound to return a service. Whether such persons may have an action against the person whom they help ?

[Ch. xlviii.]

It remains to consider those who go because they are bound to return a service, for instance, because they have received the like or other assistance from the person whom they help. Will such a person have an action to recover his losses as above, against the person whom he helps ? Solution : If he goes in the way our case supposes, he goes with the idea of discharging a " natural " obligation, which, however, cannot be transformed into a " civil " obligation, nor used as an " exceptio " in a trial ; ff. De petit. hæred., l. *sed si lege*, § *consult* ; De testamentis, *cum in officiis*. And so we infer that he does not go with the intention of imposing an obligation, since the same act uniformly undertaken cannot bear contrary effects ; ff. De verbor. obligat., l. *si quis* ; ff. De condict. indebiti, l. *cum pars*, § *si heres*, and l. *cum heres*. And if you say that there is no need to discharge this obligation, because no obligation upon which either an action or an " exception " could be founded was ever created, and that which does not exist cannot be discharged, ff. De iniusto, rupto, irrito facto testam., l. *nam*, and De dispensatione impuberum, ch. *ad dissolvendum*, the solution is this : Although no obligation upon which an action or an " exception " could be founded was created, yet, as I said above, there was created a " natural " obligation capable of being discharged by a return of service ; see the laws just cited ; and this intention of discharging prevents the creation of an obligation, since intention is required in obligation ; ff. De oblig. et act. ; l. *obligationum* ; and same title, l. *non figura*.

Of those who participate for the sake of winning glory.

[Ch. xlix.]

It remains to consider those who participate for the sake of winning glory in war.

Whether such persons place the person to whose assistance they go under an obligation to themselves ?

Do such persons place the person to whose succour they go under an obligation to themselves ? Solution : If this is their sole object in going, they do not ; for the lord would be liable either in an " *actio mandati* " or an " *actio negotiorum gestorum*." He cannot be liable in an " *actio mandati*," since no mandate was given in the circumstances supposed by our question, and an " *actio mandati* " does not lie without a preceding mandate ; for although some say that an " *actio mandati* " lies for negligence or deliberate wrongful act, when a mandate has once been undertaken, yet the preceding mandate is always required ; ff. *Mandati*, l. i. Or if you say that the " *actio mandati* " requires a preceding contract, that is more correct, as I show elsewhere in dealing with the " *innominate* " contracts ; C. *De rerum permutatione*, l. *ex placito*. Again, he cannot be liable in an " *actio negotiorum gestorum*," because the other did not come with the intention of engaging in his affairs, but rather for his own purposes, although, as a necessary consequence, he does engage in them ; and so the " *actio negotiorum gestorum* " will not lie either.

Of those who participate because they let out their services.

[Ch. i.]

It remains to consider those who let out their services, or, more accurately, those who are voluntarily enlisted at an agreed salary.

Whether such persons have an action against their hirers ?

Have the letters an action against the hirers ? Solution : Such persons make a contract of " *locatio operarum et rei* " ; and therefore, if the hirer uses them only for the purpose for which they are hired, he is not liable ; ff. *Locati et conducti*, l. *si quis domum* ; and this is so, unless there is a special term in the contract, or a custom to the contrary, as there is in Italy, namely that compensation should be given for horses lost in the service of the hirer ; otherwise the rule stands, as above.

Of those who participate with the intention of getting booty. Whether an action is competent to such persons ?

[Ch. ii.]

It remains also to consider those who go with the intention of plundering ; and as to them, there is no doubt that no action is competent to them, since no obligation arises from a dishonourable transaction ; ff. *De verbor. obligation.*, l. *veluti*, and l. *generaliter*, and l.* *si ex plagis*.

* Supply *Ad legem Aquilianam*.

Whether clerks may participate in war ?

[Ch. iii.]

Further, we must see whether clerks may participate in wars. This question was determined by Gratian, xxiii, q. viii, *convenior*; as the gloss there recites in the summary. There have been various opinions on it. For some say that clerks may use arms of defence, but not of offence, and so may make a defensive war. Others say that they may use all kinds of arms, provided that they attack at once, and only in defence of themselves, and not of others, and when they are placed in a position of imperative necessity; De homicidio, ch. ii; xxiii, q. viii, *convenior*; and the same cause, q. i, at the beginning. But if they can escape by other means, then they may not; De homicidio, ch. *suscepimus*. Others say that they may only do so with the authority of the Pope. Gandulphus holds that they may not make war in person, but may do so vicariously. Gratian seems to be of the same opinion; xxiii, q. i, § *in registro*.

✓ We may conclude this question by saying that clerks summoned by the Pope may participate; for the prince has authority to make war; xxiii, q. i, *quid culpatur*; same cause, q. ii, ch. i, and q. iii, ch. *Maximianus*. [But in a war they may not kill even a pagan, because of the fear of "irregularity," though they may encourage others to fight, and may even hurl stones and other missiles provided that none are killed by their shots.] This is noted by Innocent, De restit. spol., *olim*; and Ne cler. vel monachi, ch. *sententiam*. If summoned by others, especially by secular princes, they ought not to go to war. But for their own defence, when they cannot escape by other means, they may even kill, even without fear of "irregularity"; Clem., De homicidio, *si furiosus*. And I say defence of their own person advisedly; it is otherwise if they are defending another, even on the instant, such as a father, a brother, and the like. The note of Innocent in De sent. excom., ch. *si vero*, i, where he holds that one who strikes a clerk in this case is not excommunicated, is not in conflict with this. For "irregularity" is contracted even without fault, as where a judge puts a person to death lawfully; dist. li, ch. i; and note on De sponsalibus, ch. *inter opera*. But excommunication is not incurred without fault; indeed it must be preceded by some persuasion of the devil; xvii, q. iv, *si quis suadente*; so Clement notes in the chapter quoted, *si furiosus*.

But can a clerk be blamed who does not flee, but waits for one who is attacking and kills him in self-defence? It seems that he must be, by the text of Clement, where he says "who could not avoid death by other means"; this is proved by ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*, whence the passage in Clement was taken. And this is following the example of our Saviour, who fled into Egypt; xxiii, q. iii, § i. And this is noted by Bernard in De homicidio, ch. *suscepimus*.

I believe the contrary to be true on the authority of ff. Ex quibus causis maiores, l. *in eadem*; for there these two things, not to be able to withdraw, and not to be able to withdraw without dishonour, are treated as the same.

I am confirmed by the consideration that danger might occur in flight, for instance, if he were to fall, as often happens in flight, and therefore he ought not to expose himself to such a danger ; *Vt lite non contestata, accedens*, ii. But in this I think we must weigh all the circumstances, the danger of flight, the quality of the person fleeing, and of the person attacking, so that, if by flight a man would probably incur a danger of death, then he is not to be blamed ; otherwise he is.

Whether mercenaries enlisted in Germany, at a fixed salary by one who hires them, will have an action against one who, while they are on the way, &c. ?

[Ch. liii.]

Suppose mercenaries have been enlisted, at a fixed salary, with an engagement for six months, to come from Germany to serve an Italian, and, while they are coming, the Italian loses his status absolutely ; can the mercenaries bring an action for their salary ?

Whether mercenaries enlisted in Germany by an Italian city, at a fixed salary yearly, if the city is seized by a tyrant, while they are on the way, may bring an action for their whole salary, &c.

Suppose mercenaries have been enlisted in Germany by an Italian city, at a fixed salary, with an engagement for a year, and while they are on the way, the city is forcibly seized by a tyrant ; can the mercenaries bring an action for the whole salary, or for a rateable part, or for what ? The following texts seem to prove that they can claim the whole : *C. De annonis*, l. i ; *C. De agent. in rebus*, l. *matriculam* ; *C. De prox. sacr. scrinior.*, l. *si quis in sacris* ; *C. De primipilo*, l. i ; *ff. De legat.*, l. *legatum* ; *ff. De var. et extra. cognitionibus*, l. i, § *divus*.

On the contrary, the following texts seem to show that they can only claim a rateable part : *C. De erog. milit. annon.*, l. *his scholaribus*, and the last law but one, at the end ; *C. De advoc. divers. iudiciorum*, l. *post duos*.

Solution : In this case the debt does not arise from a pure contract, but rather from a disposition of a law, because the men are appointed to an office, and the salary is given by the disposition of a municipal law. Hence it is not merely a contract of "locatio conductio." And in such cases we must observe that persons are sometimes appointed to an office which requires labour, where the salary is given primarily for the labour ; and this is the case with mercenaries. Sometimes they are appointed to an office where the salary is given not for the labour only, but because high intellect and knowledge are required, as in magistracies and the like. Sometimes they are appointed to an office, and the salary is given for both ; that is to say, both for the labour, and for high intellect, and knowledge, as in the case of ambassadors.

In the first case, it is given rateably according to the time of service rendered ; C. De erog. milit. annonæ, last law but one. In the second case, if a single act was done in performance, then the whole is due ; see the laws quoted above to the contrary. But if there was no performance at all, he ought to have the salary for the year in which he entered on the office ; C. De advoc. divers. iudiciorum, l. *post duos*.

In the third case, what is given as remuneration for labour and skill is sometimes indivisible, as in the case of advocates, doctors, and ambassadors ; and then the whole is given as above. Sometimes it is divisible, as in the case of the constable of the standard ; for there the man is chosen on both grounds, for his skill and for his labour, and these admit of division ; so that mercenaries will receive a rateable part, whereas skilled persons, chosen by reason of their skill, have the whole, the distinction being as above.

I may add a fourth case, where a man is chosen primarily for rank, as the attendant of a prince. Then he has the whole ; C. De prox. sacr. scri., l. *si quis in sacris* ; C. De agent. in rebus, l. *matriculam* ; De principibus, l. i. And the salary passes to his heirs ; C. book xii, De domesti. et protect., last law. This solves the question of Count Landi, captain of a company of brigands, who was several times engaged as a mercenary by Italian lords, with an engagement for a fixed time and at a fixed salary.

Whether mercenaries ought to be paid at the beginning or at the end of a month ?

[Ch. liv.]

A further question is, When ought mercenaries to be paid, at the beginning or at the end of a month ? There are some glosses dealing with an advocate who also acts as a soldier, which seem to show that it is due at the beginning ; C. De advoc. divers. iudicio., l. *advocati*. This is supported by ff. De extraordin. cognitionibus, l. i, § *divus* ; C. De iudiciis, l. *properandum*, § *in honorariis* ; and ff. Locat. et conducti, l. *qui operas*, § i. C. book xii, De principibus, l. i, is to the contrary. Solution : Sometimes money is given rather for expenses than as the pay for labour, and then it is due at the beginning. Take as an illustration the case of ambassadors ; ff. De legationibus, l. *legatum* ; ff. Mand., l. *si vero non remunerandi*, § *si mandavero* ; C. book x, De legationibus, l. ii. Sometimes money is due as pay for labour, and then we must consider the intention of the parties, express or implied ; for if there was an implied intention to that effect, then it seems that it is due at the beginning. For instance, if a man cannot perform his promised services unless money is given him, then it appears to have been impliedly agreed that it should be due at the beginning, for in such cases we always look for what is the more probable ; ff. De regul. iur., l. *semper in stipulationibus*. But if this probability does not appear, then the rule is, that in obligations arising out of contract the salary is due at

the end of the time ; C. Locat. et conduct., l. *eadem* ; and ff. De stip. servorum, l. *si servus communis Mævii*, last section. But if the money is due by disposition of law to persons appointed to office (as to whom see above), as it is in the present case, then, if there is one single salary, it should be paid at the beginning ; ff. De var. et extraor. cognitionibus, l. i, § *divus*. And if the glosses to this effect are noticed, the salary may be either annual or monthly, as it is in the case of the mercenaries of whom we are speaking, who have seven florins a month, and then it is due at the beginning ; C. De advoc. diver. iudic., l. *post duos* ; and C. book xii, De principibus, l. i. I think, however, that mercenaries cannot retain it except rateably for the time for which they serve, as I showed above ; and they are bound to restore the residue, even when the impediment is caused by an extrinsic event.

Whether mercenaries who absent themselves for a time, even with the licence of their lord, lose their salary for that time ?

[Ch. lv.]

Suppose that mercenaries during the time of their service withdraw for a time ; will they lose their pay for that time ? And suppose that they do so with the licence of their lord ? Solution : We must observe that services are sometimes defined with respect to a time that is not specified. Take the case of advocates of a church, who have a fixed salary to cover any cause which may affect the church during the year ; in that case there is no doubt that there is a single obligation, because there is a single duty imposed, although there may be several acts of performance. Therefore the whole sum is due ; see the passages cited above ; ff. De extraor. cognitionibus, l. i, § *divus*. Sometimes services are defined with respect to a specified and fixed time, as in the case of a learned doctor employed to read a certain book in a certain time. And then either the whole salary is promised at once, although payment may be distributed over the period ; and even then there is a single obligation, as above ; ff. De rebus creditis, l. *lecta*. Or sometimes payment is made by the year or by the month, and then there are as many obligations as there are months ; l. *post duos* ; and payment cannot be claimed for the whole time, but the instalments become payable severally for each month of service.

Whether mercenaries, who wilfully refuse to serve the whole time of their engagement, lose their pay for the whole time, or only for that which they have not served ?

[Ch. lvi.]

Suppose they wilfully refuse to serve the whole time, will they lose their salary for the whole time, so that they will have nothing even for the time which they have served, or should they only lose it for the time they do not serve ?

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Solution : There are some offices to which a man is appointed, which are so indivisible that if one thing is left undone, the rest is of no avail, and in such cases the whole salary is lost. Take the example of ambassadors, C. De legationibus, l. ii. There are other offices which are divisible to the extent that, if one thing is left undone, the rest is of value. Take the example of a mercenary. He need not return the whole, but only the part attributable to the future ; yet he is liable for any damage caused by his refusal to serve in the future, so that if no damage is caused, he pays nothing ; ff. Locat. et conduct., l. *si fundus*, § *verisimilis* ; and notes on ff. De annu. legatis, l. *Mævia*.

Whether a mercenary may serve by a substitute?

[Ch. lvii.]

What if he wishes to serve by a substitute ? It appears that he cannot, because he was enlisted for his personal skill ; ff. De solut., l. *inter artifices* ; C. De caduc. tollend., the single law ; and Sext, De offic. delegat., the last chapter, and ch. *is cui*. On the other hand, any one can do by another what he can do by himself ; rule *potest quis*, and similar passages. Solution : The mode of appointment should be considered ; for sometimes a lord or a city appoints a constable, and gives him a standard and pay, and the constable has to enlist for himself those whom he will have to serve under the standard ; in this case no question runs between the city and the mercenaries, because the city enlists nothing except the skill and labour of the constable, yet the mercenaries are themselves bound. Sometimes a city enlists mercenaries for itself and places them under the several standards, and then it chooses a constable for his skill and services. In respect of skill, a man could not give a substitute, as appears by the laws just cited. The mercenaries are chosen only for their services and labour ; and persons who are chosen for services, and not for skill, may appoint a substitute, as Innocent notes in De re iudicata, ch. *cum Bertholdus*. Hostiensis has an opinion to the contrary in that passage. I think Innocent is right, having regard to the laws just cited and their true intent. But it is safer to do it with the lord's consent, so that both opinions may be respected.

Whether a mercenary loses pay during the time when he is ill ?

[Ch. lviii.]

What if a mercenary is ill ? Solution : He is deemed to be serving, so that his salary is due ; ff. De statuliberis, l. *si heres*, § *Stichus*⁽⁷⁾.

Of spoils and captures in war. Whether one who makes a capture in war becomes owner of the person or thing captured, and whether the doctrine of "postliminium" applies?

[Ch. lix.]

Fifthly, it remains to consider spoils and captures made in war.

And in the first place I ask whether one who captures anything in war becomes owner of the person or thing, and whether the doctrine of "postliminium" applies. Solution: In a public war, made by the authority of a prince, which I have discussed above, this is so. For the captor becomes owner; the persons captured become slaves; ff. De captivis, l. *hostes*; and ff. De verb. significatione, l. *hostes*. But if the war does not proceed from the edict of a prince, although it may be otherwise lawful, as when it is in defence of one's own property, then, if he who declares war has jurisdiction over him on whose account he declares it, he may decree that any one capturing anything in the war shall become owner of things captured, and shall detain persons until he can present them to his superior. So Innocent holds in De iureiurando, ch. *sicut*, referring on this subject to the note on De sent. excommunicationis, ch. *a nobis*. Innocent adds that even without making any decree, he may condemn him for invading the bounds of his jurisdiction; Authent., *qua in provincia*, C. Vbi de crim. agi oporteat. He adds that if the person declaring war has no jurisdiction, but is merely defending himself and his property, then he may not capture and detain the assailant, because he is only allowed to defend himself, and that only within the limits of justifiable defence; C. Vnde vi, l. i; De restit. spoliatorum, *olim*. He adds that if he attacks the property of his assailant, the assailant cannot succeed in an "actio vi bonorum raptorum" nor in an "actio iniuriarum," because he may be met with an "exceptio par criminis," setting up a like offence on his own part. All this, as I said, is noted by Innocent in De iureiurando, ch. *sicut*. I think Innocent's first statement is true without qualification, because a lord may punish an offence by a decree depriving a man of the ownership of his property and transferring it to another. But I think the second statement requires qualification. I think, rather, that if a state which recognizes no superior in fact, and so is an enemy of the Roman people, declares war on another, which also recognizes no superior, no decree is required, any more than in a war declared by edict of the prince; for this rule comes from the law of nations, which is derived from ancient customs, except that the part which concerns persons no longer holds, because in modern times persons captured in wars of that kind do not become slaves and are not sold, and the doctrine of "postliminium" does not apply in such cases to-day. On reading his third statement, I have sometimes been led to disapprove of that decretal for the following reason: One who has been despoiled is entitled, above all things, to restitution, and the "exceptio criminis" cannot be set up against him; De restit. spoliatorum, ch. *in literis*, and ch. *item cum quis*. The person first despoiled, therefore, will not be able to set up the "exceptio

criminis," nor any other even more stringent "exceptio." Now, as I write, I think that Innocent's gloss may be saved in two ways. First, because Innocent does not speak of a case in which the person last despoiled brings the interdict "unde vi"; he speaks, rather, of a case where he brings the "actio vi bonorum raptorum" or the "actio iniuriarum," which are obviously very different. Or, secondly, we may say that Innocent does not mean that an "exceptio criminis" in the strict sense is set up, but an "exceptio" alleging the other's act of spoliation, which is allowed even against one who brings a "recuperative" interdict, so that he may be defeated by an "exceptio spoliationis," as the text in *De ordine cognitionum*, ch. *super spoliatione*, proves.

Whether persons captured in a war between two states become slaves, and whether ownership is acquired over them?

[Ch. lx.]

When one state makes war against another, can men be called "enemies," in the sense that if captured they will become slaves, and ownership over them be acquired? It appears not; ff. *De captivis*, l. *si quis ingenuam*, at the end. On the contrary, a state of itself makes a people, and so it appears that they are "enemies," just as are the Christian and the Saracen peoples. Solution: When the dispute is between two states which are under the same lord, the rules of captivity and "postliminium" do not apply; ff. *De captivis*, l. *si quis ingenuam*. But when it is between two states that do not recognize a superior—and I assume, to remove all doubt, that one is an enemy of the Empire, as being rebellious—then, by the law of nations, which is derived from ancient customs, the rules of captivity and "postliminium" apply, except that, according to the customs of modern times, and the practices observed among Christians from an early age, "postliminium" does not apply to persons, and persons are not sold, and do not become slaves.

Whether things captured in war become the property of the captors?

[Ch. lxi.]

Do things captured in war become the property of the captors? It seems that they do, by ff. *De captivis*, l. *si quid in bello*. The contrary seems to be proved by the same title, l. *si captivus*. Solution: The law *si quid in bello* speaks of movable things; the law opposed to it of immovables. But it is objected that movables become public property; xxiii, q. v, ch. *dicat*. Solution: I say that they become the property of the captor; but he is bound to assign them to the general of the war, who will distribute them according to deserts. And this rule applies wherever the doctrine of "postliminium" does not apply; ff. *De captivis*, l. ii.

Whether trickery is allowed in wars?

[Ch. lxii.]

A further question is whether one may use trickery to win victory in wars. It seems that one may; for Augustine says, in the book of *Quæstiones*, "when a lawful war is undertaken, justice has no concern with the question whether one fights in the open or by trickery." This is supported by Joshua, ch. viii. To the contrary seems to be what is written in Deuteronomy, ch. xvi, "that which is just shalt thou follow justly." But to follow a thing by trickery is to follow it unjustly, since it savours of deceit, and such practices are restrained by the "*actio de dolo*"; ff. *De dolo*; C. same title, throughout. Moreover, trickery is opposed to happiness, and it breaks the faith, which should be kept even with an enemy; see Augustine to Boniface, quoted in xxiii, q. i, ch. *noli*; xxxiii, q. v, *quod Deo pari consensu*. Moreover, it is written in Matthew, ch. vii, "whatsoever ye would that men should do to you, do ye even so to them," and in the beginning of the *Decretum*. And this rule must be observed towards all our neighbours. Since, therefore, no one would wish trickery to be used to himself, it follows that he ought not to use it to others. Solution: We must observe here that the word "trickery" properly means anything which tends to deceive another; but there are two ways in which a person may be deceived by the word or act of another. One way is if a false statement is made in order that another may be deceived, or in order that some promise may not be observed, and such a use of trickery is always unlawful; for between enemies there are certain bonds which must be observed, as Ambrose says in the book *De Officiis*. In the other way, a man may be deceived by our words or acts merely because we do not disclose to him our intentions or our secrets. This mode of deceit is lawful; for not even the secrets of Holy Scripture are at all times to be disclosed, lest men scoff at them, according to the passage in Matthew, ch. [x]vii, "Give not that which is holy unto the dogs." Moreover, it is a special instruction among military documents, that secrets are not to be revealed to enemies, and so, too, the Blessed Thomas lays down in the Second book of the Second part, question xl; and the gloss on xxiii, q. ii, ch. *dominus*, says without qualification that we may use this kind of deceit, provided we do not break faith; same cause, q. i, ch. *noli*. The gloss on xxii, q. ii, ch. *utilem*, is to the same effect; it quotes dist. xliii, can. *in mandatis*; ff. *De capt.*, l. *nihil interest*; C. *De commerc.*, l. ii; xiv, q. v, *dixit*; *De consecra.*, dist. ii, *dixit dominus*.

Whether it is lawful to make war on feast days?

[Ch. lxiii.]

The next question is whether one may make war on feast days. And it seems that one may not, for feast days were introduced in order that one might have leisure for divine things; *De consecra.*, dist. ii, § *pronuntiandum*;

De feriis, last chapter ; C. same title, l. *dies*, and the last law ; and this is supported by Exodus, ch. xx. Moreover, in Isaiah, ch. lviii, those who claim debts on days of fasting, and engage in quarrels, smiting with their fists, are reprov'd. Much more, then, should those who make war on feast days be reprov'd. Further, no irregularity may be committed in order to avoid a temporal inconvenience. Therefore, &c. Moreover, the text of De treug. et pace, ch. i, seems to confirm this view.

On the contrary side, we read in 1 Maccabees, ch. ii, "they took counsel laudably saying, Whosoever shall come against us to battle on the sabbath day, let us fight against him." Solution : The Blessed Thomas, in the Second book of the Second part, question xl, holds that one may make war on feast days in case of urgent necessity, but on the necessity ceasing, one must cease from the war ; and he supports this by the passage in John, ch. vii, "are ye angry at me, because I have made a man every whit whole on the sabbath day ?" And so he argues that doctors may heal for the sake of a man's private health, but the public advantage is an object of much greater importance. Goffredus and Hostiensis, in De treug. et pace, ch. i, say that on Thursday we should not make war, because on that day the Lord ascended into Heaven, and made the supper with the Disciples ; De consecra., dist. i, *porro* ; and De consecra., dist. ii, *literis* ; nor on Friday, out of reverence for the Passion of the Lord ; nor on Saturday, because the Disciples on that day hid for fear of the Jews, and because the body of the Lord lay in the sepulchre : De consecra., dist. iii, *Sabbato* ; nor on Sunday, because the Lord did almost all His notable acts on that day ; dist. lxxv, *quod die* ; and out of reverence for the Resurrection. I believe that the urgency of the necessity must be considered, as mentioned above. The text of Pope Nicholas is in xxiii, q. viii, ch. *si nulla*.

*Whether one who has recovered in a war the whole of his
loss, may still, &c. ?*

[Ch. lxiv.]

The next question is, What if a man has recovered in a war the whole of his loss ; may he still bring an action against his adversary, or may he still declare war against him ? It seems that he may bring an action ; for what is captured in war is the penalty of contumacy, and so it would seem that he may bring an action none the less ; ff. De tab. exhib., l. *locum*, the penultimate section. Also, the thing was not paid in satisfaction of a debt, but the ownership of it was obtained by war ; xxiii, q. v, *dicat* ; and q. vii, *si de rebus* ; ff. De acquir. rer. dom., l. *naturaliter*. Also because, against one who is contumacious, an oath may be taken an unlimited number of times ; ff. De rei vind., l. *qui restituere*. The gloss on xxiii, q. ii, ch. *dominus*, holds the contrary, on the authority of ff. De reg. iuris, rule *bona fides*.

I do not think that the gloss is true without qualification, but a distinction should be drawn according as the loss was recovered from the same person

or from others. If from the same, the opinion of Johannes holds; if from others, or . . . , and then the rule is the same; C. De evict., l. *emptori*; or he might have a right of recourse against the first; C. De usur. rei iudic., l. ii, the last section. But otherwise it is allowable for the same debt to be paid several times over; ff. De tab. exhib., l. iii, § *condemnatio*; and Instit., De legat., § *si res*. So the gloss notes on ff. De reg. iur., rule *bona fides*; and so, too, notes Io. Faventinus ^o on the ch. *dominus*, already quoted.

Whether those who die in war are saved?

[Ch. lxv.]

Are those who die in war saved? Solution: Those who die in a war for the defence of the Church obtain the heavenly kingdom. Two texts in particular prove this, xxiii, q. viii, ch. *omni*, which was addressed by Pope Leo to the King of the Franks; and xxiii, q. v, ch. *omnium*, which was addressed by Nicholas to the army of the Franks. But those who fall in other lawful wars are also saved, provided they die without mortal sin; but if they fall in an unlawful war, though that be their only mortal sin, they perish; De Pœn., dist. v, *fratres*.

Whether it is lawful to wage corporeal war on behalf of the property and possessions of the Church, &c.?

[Ch. lxvi.]

Is it lawful to defend the possessions of the Church by corporeal war, and for this purpose to assemble troops? Obviously it is. It is proved by the texts xxiii, q. iii, ch. *Maximianus*; xv, q. vi, *auctoritatem*; dist. lxiii, *Adrianus*; xxiii, q. viii, ch. *igitur*, and ch. *hortatu*; and the gloss *magistra* on xv, q. vi, ch. *auctoritatem*. Also by the text of Sext, De sent. excom., ch. *dilecto*.

Whether bishops may go to war without the licence of the Pope?

[Ch. lxvii.]

May bishops go to war without the licence of the Pope? Some say they may not, without any qualification, on the authority of canons which appear to lay this down expressly; xxiii, q. viii, *quo ausu*, and ch. *si vobis*, and ch. *si quis episcopus*. Though those chapters admit of various meanings, yet I think this is true, if they are summoned, or if they join of their own accord in the wars of others, particularly secular wars; otherwise, if they are defending their own rights.

Whether prelates, for the temporalities which they hold from the Emperor, &c.?

[Ch. lxviii.]

Are prelates bound to pay tribute for the temporalities which they hold from the Emperor for wars declared by him? We must say that they are, as is proved by xxiii, q. viii, § *ecce*, with the two following sections, down to § *quamvis*.

Whether mercy should be shown to persons captured in a lawful war?

[Ch. lxi.]

Should mercy be shown to persons captured in a lawful war? We must say that it should, unless by sparing them there is fear of a disturbance of the peace. This is proved by xxiii, q. i, ch. *noli*, at the end; and on the authority of that chapter, as understood by Hugolinus, Conradine was beheaded.

Whether the Church should declare war against the Jews?

[Ch. lxx.]

Should the Church declare war against the Jews? We must say not, since everywhere they are prepared to serve, and do not persecute, Christians. Otherwise of the Saracens, who do persecute Christians. This is the text, xxiii, q. viii, *dispar*; and the gloss there notes that it would not be necessary to declare war even against the Saracens, if they did not persecute Christians.

Whether those who attend in a war, but who cannot fight, &c.?

[Ch. lxxi.]

Should those who attend in a war, but who cannot fight, enjoy the immunities of combatants? Say that they should, provided that they are useful in counsel in other ways; see the note on De voto, ch. *ex multa*.

Whether prelates, by reason of temporal jurisdiction, may, &c.?

[Ch. lxxii.]

May prelates declare wars, and take part in them, and encourage others to battle, by reason of their temporal jurisdiction? Say that they may, as Innocent notes in De pœnis, ch. *quod in dubiis*.

Whether a prelate, for the injury of a subject, may, &c.?

[Ch. lxxiii.]

May a prelate declare war for an injury done to his subject, for which justice is not done, and capture in the war persons other than the wrong-doers? Say that he may, as Innocent notes in *De appellat.*, ch. *dilectis*; and *De iureiurando*, ch. *sicut*.

Whether the Pope's delegate may declare war?

[Ch. lxxiv.]

That is to say, may he invoke the secular arm? The question has been much discussed, and is treated in *De offic. deleg.*, ch. *significasti*, by Innocent.

Whether wars declared by the Church against excommunicated persons are meritorious?

[Ch. lxxv.]

Are wars which the Church declares against excommunicated persons meritorious? We must say that they are, and it is lawful for prelates and individuals to encourage others to fight in them. This is proved by the texts xxiii, q. v, *ad omnium*, and the following chapter; and q. viii, ch. *igitur*, down to § *ecce*; and q. iv, ch. *sicut excellentiam*.

How many are the kinds of corporeal wars?

[Ch. lxxvi.]

The next question is how many are the kinds of corporeal wars which are recognized in law. Solution: Seven kinds are recognized by law.

The first is called "Roman," and is that which the faithful wage against the infidels; and this is lawful; *De hæreticis, excommunicamus*, ii. And it is called Roman, because Rome is the head of the Faith; xxiv, q. i, *hæc est fides*, and ch. *quoniam*; *De summa Trin.*, the penultimate chapter. And in this sense may be understood ff. *De captivis*, l. *hostes*.

The second is that which is made on the authority of a lawful judge, having mere jurisdiction against the contumacious and rebellious; ff. *Quod met. causa*, l. *continet*; ff. *De iurisd. omn. iudic.*, l. iii, and l. iv; C. *Ne quis in sua causa*, the single law. And these are not strictly called enemies, for although that which we acquire from them becomes ours, yet the converse is not true; ff. *De captivis*, l. v, § *in pace*.

The third is called "presumptuous" war, and is that made by persons who disobey a judge; *De Pœn.*, dist. iii, § i, at the end; *De maiorit. et obed.*, ch. *si quis venerit*; ff. *De rei vind.*, l. *qui restituere*; ff. *Ne vis fiat ei qui in pos. missus*, l. iii; C. *De seditiosis*, l. i, at the end.

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The fourth is the war which is lawful whenever it is allowed by authority of law. And it is lawful as regards the person to whom the authority is given ; xxiii, q. ii, ch. *si dominus* ; De sent. excom., *si vero*, i, § *nec ille* ; C. Quando lic. unicuique sine iudi. se vindicare, l. i, and l. ii ; and also his relations and neighbours ; Sext, De sent. excom., *dilecto*.

The fifth, which is unlawful, is war made against the authority of law, as where a man defends himself contrary to the authority of a judge and of the law ; De sent. excom., *perpendimus*, and ch. *contingit*, and ch. *in audientia*.

The sixth, or " voluntary " war, is that which the secular princes of our time make without the authority of the emperor. And this is unlawful, because without the authority of the emperor it is not even lawful to bear arms ; C. book xi, Vt armor. usus, in red and black ; Authent., coll. iii, De man. prin. ; Authent., coll. vi, De armis. Moreover, those who do so violate the *lex Iulia maiestatis* ; ff. Ad leg. Iul. maiest., l. iii.

The seventh, which is called " necessary " and lawful war, is war made by the faithful, when they defend themselves by the authority of the law against those who attack them ; for to repel force by force is lawful ; ff. De iustit. et iure, l. *ut vim*, and similar passages. On these subjects see Hostiensis, Sext, De homicidio, *pro humani* ; and the Archdeacon, xxiii, q. ii, ch. *iustum*.

From this we see what wars are lawful, and what are unlawful. For wars are said to be lawful by reason of the person declaring them, the person against whom they are declared, the thing, and the cause, and the law which allows them ; and they are unlawful in the converse cases. But generally there is one justifying cause, the contumacy of one who resists unlawfully. For when justice cannot be had from one who is liable, then war may be declared, for recourse is had to that instrument for help ; xxiii, q. i, *quid culpatur*, and ch. *noli* ; xxiii, q. viii, *si nulla* ; ff. De usuf., l. *si ususfructus*. And on this question of what wars are lawful, there are notes by Innocent, De resti. spol., *cum olim*, i ; by Hostiensis, in Summa, De treu. et pace, § *quid si iustum* ; by the Blessed Thomas, in the Second book of the Second part, question xl, the first, second, and third articles ; and by Ægidius, in the book De regimine principum, at the end.

Of particular war which is waged in self-defence ; being the Fourth Treatise of the Third Principal Part.

[Ch. lxxvii.]

Universal corporeal war having been considered above, in the third preceding principal treatise, it now remains to consider, fourthly, particular war which is waged in self-defence ; and in treating it I shall proceed as follows : I shall first show what it is. Secondly, how many are its kinds. Thirdly, by what authority it was introduced. Fourthly, who may use it. Fifthly, against whom. Sixthly, on whose behalf. Seventhly, in what manner. Eighthly, what is its end.

What is particular war ?

[Ch. lxxviii.]

As to the first question, what is the war declared "particularly" in self-defence, I say that it is "a contention arising on account of something alien presented to human desire, proceeding from the infliction of particular violence, and tending to its exclusion." This definition is supported in substance by the text of ff. De iustit. et iure, l. *ut vim* ; ff. Ad leg. Aquil., l. *[qui] scientiam*, § *qui cum aliter* ; C. Vnde vi, l. i ; ff. De vi, l. iii, § *si quis* ; and De resti. spol., ch. *olim*. I said "contention," for contention is taken as the genus, as it was in the definition of war undertaken generally, in the first treatise above, at the beginning. Secondly, I said "arising on account of something alien," &c. ; this supplies its differentia, for herein it differs from universal war, and other species of war. Thirdly, I said "tending to its exclusion." This is the final cause of the war itself.

How many are the kinds of particular war ?

[Ch. lxxix.]

As to the second question, which asks how many are its kinds, I say that they are two ; for I divide it into "lawful," and "unlawful," as I also divided universal war. But lawful particular war is of two kinds. For one kind is waged in defence of the true body, or what belongs to or concerns the true body. This I shall discuss in the present treatise. Another kind is waged in defence of a mystical body, or a part of it, meaning a community, which is called a body, and the individuals who compose it are called its limbs and parts ; ff. Quod cuiusunque univer., l. i ; ff. Ad municip., l. *quod maior* ; ff. De in ius vocand., l. *sed si hac*, § *qui manumittitur* ; De excess. prælat., l. *cum dilecta*, and the note on that passage. If, therefore, a community declares war in defence of one of its citizens, who is oppressed by a stranger, in default of justice being rendered by the judge of the oppressor, this is called "Particular War in defence of the mystical body, or a part of it" ; and this is called "Reprisals," as to which see Authent., Vt non fiant pignor., throughout ; Sext, De iniur., the single chapter, throughout. And this war will be discussed in the treatise next following. But lawful particular war, declared in defence of the true body, is a contention arising on account of something alien presented to human desire, proceeding from the infliction of particular violence by a private or public person, acting unlawfully outside his office, tending to its exclusion, within the limits of justifiable defence ; and this is supported by C. Vnde vi, l. i, with the note on that passage. But it is unlawful when the foregoing conditions, or any of them, are wanting, as will be shown in the following discussion.

By what law was particular war introduced?

[Ch. lxxx.]

As to the third question, which asks from what law this war proceeds, and what law makes it competent, the gloss on ff. De iustit. et iure, l. *ut vim*, on the word "iure," says, "by the law of the courts, not by the law of heaven." If the gloss means that this war proceeds from the law of the courts, I think that the gloss is not true. If it merely means that the law of the courts allows it to be declared, I think it is correct. But when the gloss says, "not by the law of heaven," I think it is false. I return to the particular points; and I say that war in self-defence proceeds from natural law, and not from positive law, civil or canon. And that this is true may be proved as follows: For the nature that produces a thing tends to its conservation, so long as the strength of the natural agent lasts, and strives to expel anything hostile to it; and if this is not so, the cause is a failure of the strength of the natural agent, and an excess of those acting against it. But this is not caused by intention of the natural agent, productive and conservative, but contrary to intention, since it always resists its opposites, so far as it can. This is obvious from experience, if we argue by natural instances. For it is obvious in the elements, which act and are acted upon in turn. For a thing acted upon resists the thing acting, and reacts upon it, solely to the end of its own conservation, and the destruction of the thing acting against it. And a material corporeal agent is always acted upon in acting itself, as the Philosopher says in the third book of the Physics, and the second of De generatione. This is obvious in inanimate things, such as plants, for their special nature tends to their own conservation and life, and to the expulsion of their opposites; and also in animals, and why not also in a rational creature? in whom, rather, the process is even more marked, because the creature himself is nobler, and other things are ordained to his service, as their end; ff. De usuris, l. *in pecudum*. Defence, therefore, proceeds from natural instinct. The text of Clem., De sententia et re iudicata, *pastoralis*, § *ceterum*, supports this. The text there speaks of defence which proceeds from natural law. This seems to be the meaning of the gloss on ff. Ad leg. Aquiliam, l. *scientiam*, § *qui cum aliter*. The gloss there says that the laws permit, in that they do not forbid. This is supported by the text of ff. Ad leg. Aquiliam, l. *itaque*. The text there says that natural reason allows one to defend oneself against danger. I conclude therefore, from this reasoning, that this war, limiting it to war declared in defence of one's person, proceeds from natural law and one's own instinct, but that positive law approves it, or does not forbid it, as the gloss on l. *scientiam*, § *qui cum aliter*, says. For some things which proceed from natural instinct are punished by positive laws, as in carnal intercourse; for intercourse, as such, proceeds from natural instinct, yet some unions are condemned by statute. And in this positive law limits and qualifies acts which proceed from natural law. So in other instances of acts proceeding from nature; for one naturally desires food and drink, and

yet the canon law limits this desire. For it forbids certain foods at certain times. It is true that positive law also qualifies the mode of defence, as appears in C. Vnde vi, l. i, and as will appear in the citations below. We conclude, then, that this war proceeds from natural law, but that it is approved by positive law, both civil and canon, and also qualified and regulated by them. And perhaps if understood in this way the gloss on l. *ut vim* may be saved.

Secondly, the gloss said, "not by the law of heaven." The gloss seems to mean that the divine law does not allow violence to be repelled by violence. This view of the gloss seems to be supported by certain texts; for it is written in Luke, ch. vi, "unto him that smiteth thee on the one cheek offer also the other"; xxiii, q. i, at the beginning. It is also written, "whosoever shall compel thee to go a mile, go with him twain"; Matthew, ch. v. It is also written in Romans, ch. xii, "avenge not yourselves, but rather give place unto wrath." Christ also said to Peter, when he wished to defend Him, "put up again thy sword into his place," Matthew xxvi; quoted in xxiii, q. i, at the beginning. These passages might move us to agree with the gloss in holding that it is forbidden by the law of heaven. But I think that the gloss is wrong, as may be clearly shown. And first as follows. An act which is consonant with charity is lawful by divine law, and defence of oneself is such an act. Therefore, &c. The major is proved; for charity excludes any act which is at variance with divine law, since it is incompatible with such an act, being itself the foundation of everything that is lawful. This is proved by De Pœnit., dist. ii, [si] *radicata*, and ch. *caritas est, ut mihi videtur*. And the second point, the minor premise, is proved by the same "distinctio," ch. *quia radix*. For the chief act of charity is to love one's neighbour as oneself, as appears in the next canons, and De Pœnit., dist. ii, ch. *caritas est. § proinde*; therefore it implies self-love and self-conservation, and if so, self-defence. Therefore the law of heaven allows one to defend oneself. Moreover, the divine law allows one to defend one's neighbour from death, even against his will. Therefore much more does it allow one to defend oneself. The consequence follows by the reasoning last given. The antecedent is proved by the text in xxiii, q. iv, *ipsa pietas*, and ch. *displicet*. Moreover, the divine law forbids a man voluntarily to strive after his own destruction. What I mean by that is merely this: that if he duly strives after some other thing approved by the divine law, even though in gaining that thing self-destruction follows as a consequence—that is not forbidden; as where a man, in order to obtain the state of eternal blessedness, afflicts his own body, no one doubts that the affliction is destructive of the body, yet this is not its final end, but the avoiding of carnal vices, and the obtaining of the eternal state. The same might also be said of those who have allowed themselves to be slain for the sake of the catholic faith; for their final purpose is not the destruction of their body, but the defence of the faith, for the sake of which they voluntarily expose themselves to temporal death, which the divine law allows. But one who does not defend himself from death, when he can, voluntarily kills himself and compasses his own destruction;

and so this is forbidden by divine law. The major is proved ; for those who kill themselves in this way are regarded as condemned by the divine law, as we say of Judas and those like him. The minor is proved ; for one who does not defend himself from death, when he can, and does not come under the cases above mentioned, and does not fail to do so merely from cowardice, desires his own death, and kills himself by another's hand ; which is just as if he killed himself by his own hand, according to the rule *qui per alium*, Sext, De reg. iuris. Moreover, the divine law does not absolutely forbid acts which proceed from natural law, but modifies and controls them. This is clear from illustrations ; for it does not altogether forbid food and drink, or sexual intercourse, or the like, but modifies and controls those actions, rejecting extremes, and approving the mean, as does the moral law also ; Ethics ii, iii, and iv. But if the divine law were absolutely to forbid self-defence, since that action proceeds from an instinct of nature, it would absolutely destroy an act of nature, which is absurd, for the reasons given above. Moreover, the canon law allows it ; therefore the divine law does not forbid it. The antecedent is proved by De restit. spol., ch. *olim* ; Clem., De re iudic., *pastoralis*, § *ceterum* ; and more clearly by Clement, De homicidio, *si furiosus*. The consequence holds ; for the canon law is interchangeable with the divine law, and so they cannot contradict one another ; for they tend to the same end, though in different ways. For the canon law treats of the government of the earthly kingdom, that human society may be preserved in the world, which is also the subject of the civil law ; but the canon law goes further, for it disposes and prepares for the state of eternal happiness, to which the divine law leads ; and so it is necessary, if we observe the identity of their end, that everything which the divine law forbids, should be forbidden by the canon law. Accordingly, we may pass over other arguments which might be adduced without number, and conclude that the gloss is not correct in saying that the law of heaven does not allow self-defence.

To the authorities cited to the contrary, the true answer is that given by Gratian in xxiii, q. i, § *his ita*. The answer is, that they are to be understood to refer to the inner preparation of the heart, not the conduct of the body ; for a man ought to have humility of heart within, as Augustine shows in the Sermon on the Centurion's Son, when he says, " a man ought to be prepared," &c. See xxiii, q. i, ch. *paratus*.

This discussion gives us the answer to our third question as to whence this war arises, and what law allows it.

What persons may declare this particular war ?

[Ch. lxxxi.]

We must consider the fourth question, namely, Who may declare it ? On this subject I begin by saying that it is one thing to ask who may defend himself, and another to ask who may declare the war above defined, the object

of which is defence. If we ask to whom defence is allowed, I say that it is allowed to all natural created and corruptible beings. And I say "created and corruptible," because it is not allowed to the heavenly bodies, because they cannot be acted upon by any hostile agent, since their bodies are not receptive of foreign impressions, as the Philosopher says in *De Cœlo et Mundo*, book ii, since they are not composed of the matter which is the matter of generation and corruption. And so there is no need of defence, since they cannot suffer. But to all material things defence is allowed by natural first principles, since they are accessible to suffering ; and such defence proceeds from natural law, which is a force inborn in things, creating like from like. For by creating its like a thing preserves itself in its kind, which cannot be done for ever in the individual ; and also by its individual action it strives to destroy its opposite, which resists it, and conversely. And this is the first mode of natural law, as to which see the gloss on dist. i, can. *ius naturale* ; and it is commonly noted in ff. *De iustit. et iure*, l. i, § *ius naturale*. So, then, self-defence is allowed naturally to all material things ; and it proceeds from the strength placed by nature in any being, as any one may perceive by his senses by taking natural illustrations. But if we ask who may make the war above defined, then I say that men only may do so, and not other creatures, as the definition of the war proves, when I said, "something alien presented to human desire," &c. And now we must ask whether all men may make it.

Whether clerks may declare this war ?

[Ch. lxxxii.]

And first, I ask whether clerks may declare this war. That clerks may not do so is proved by *De homicidio*, ch. *suscepimus* ; by dist. xlvi, can. *seditionarios* ; and by the texts of xxiii, q. viii, ch. i, and ch. *cum a Iudæis*, with the chapters following, down to ch. *his*. Such is the answer given. It is proved by ch. *convenior*, in the same cause and question. That they may do so is proved by *De restitution. spol.*, ch. *olim* ; *De sent. excom.*, ch. *si vero*, and ch. *ex tenore* ; dist. i, *ius naturale* ; ff. *De iustit. et iure*, l. *ut vim* ; ff. *De vi*, l. iii, § *si quis*. The text in Clem., *De homicidio*, *si furiosus*, is clearer. On this there have been the opinions recited by the gloss on xxiii, q. i, in the summary, and the same cause, q. viii, in the summary ; for some have said that no one, not even a lay person, is allowed to repel force with force by striking back, but only by preventing. This opinion is disapproved by Clement, *De homicidio*, *si furiosus*. Others say that laymen may strike back, but not clerks, and this view suffers from the same defect. Others say that if force is used to a person, it is lawful to repel it, even by striking back, and even for clerks. This is approved by Clem., *si furiosus*, provided the conditions which he mentions are satisfied. But if the force is used to things, then the answer is otherwise. But whether this second statement is true, I shall discuss below.

Hugo refused to say that a man ought in no circumstances, however great the necessity in which he was placed, and even if he could not escape by any other means, to kill another, but rather to allow himself to be killed. He has a note to this effect on dist. 1, can. *de his*. The gloss there notes the contrary; and on De homicidio, ch. *sicut dignum*. I do not insist on this, since, as I said, there is the text in Clem., De homicidio, *si furiosus*; and even if there were no text on the subject, expressly deciding it for or against, we should be led to the same conclusion by the reasons which I adduced to prove that it is not forbidden by divine law.

*Whether, although a clerk may defend himself even by killing another,
he may do this in a church?*

[Ch. lxxxiii.]

Secondly, I ask whether, if a clerk may defend himself in this way, even by striking back and killing another, he may do this in a church. And it seems that he may not; for although a law may permit certain acts generally, yet they may be forbidden by reason of the place, so that the general permission is restricted by the special provision; ff. De poenis, l. *sanctio legum*; ff. De alim. leg., l. *alimenta*, § *basilicæ*; ff. De legat. iii, l. *uxorem*, § *felicissimo*; and De rescriptis, ch. *pastoralis*. Sext, rule *generi*, suffices. That many acts are permitted generally by a law, which are none the less forbidden in special circumstances, is proved by the texts of Sext, De immun. eccles., ch. *decet*; and i, q. [i] iii, ch. *vendentes*. So, therefore, in the case proposed, and much more, since this is an act by which the church may be polluted; De consecr. eccles. vel altaris, ch. *proposuisti*; and Sext, same title, the single chapter. Moreover, quarrels and brawls generally are forbidden in churches; ch. *decet*, just cited. Therefore this act must be forbidden, since it is a kind of brawl. To the contrary, it may be urged that the laws which permit it speak in general terms, and therefore they ought to be so understood; ff. De lega. præstandis, l. i, § *generaliter*. This part I believe to be true, since the action arises from natural law, and it is not disapproved by divine law, and the reason of the law sanctioning it is of general application, without distinction of places. For natural law introduced it in order that a man might preserve himself as long as the strength of natural first principles lasts, and this reason applies in a church as much as anywhere else. It is easy to answer the authorities cited to the contrary, for the acts forbidden in a church are either acts which, from their nature, belong to the class of bad acts, or which belong to the class of permitted acts, such as contracts. Yet their exclusion from a church does not cause great danger on the ground of delay, since they may be performed equally well outside the church, at the pleasure of the contracting parties, since they have their origin in the will of the parties; C. De act. et obligationibus, l. *sicut*. But in the present case, if a man were not allowed to repel force with force in a church, the danger would be immediate, because he would

easily be killed at once. As to the other argument, that pollution might follow, the solution is this: The preservation of a man, which cannot be restored, is more to be considered than a church, which may be resanctified. And perhaps we might say that, for a church to be polluted, the spilling of the offender's blood is necessary; see the note on Sext, De consecra. eccle. vel altaris, the single chapter.

Whether a clerk, attacked in the act of celebration, may defend himself, and kill his assailant, and so continue to celebrate the office?

[Ch. lxxxiv.]

Thirdly, I ask whether, if a clerk is attacked in the act of celebration, he may leave the office, defend himself, and kill the assailant; and whether, if he kills him in thus defending himself, he may continue to celebrate the office. As to the first point, it appears that he ought not to leave the office, but that he is bound to perform it as long as he can; see the text in vii, q. i, *illud*, and ch. *nihil*. Moreover, temporal things are to be postponed to spiritual; xii, q. i, *præcipimus*; De pœnit. et rem., *cum infirmitas*; C. De episcop. et cler., l. *sancimus*. The contrary view is supported by other texts; for an office begun may be left uncompleted because of some physical impediment supervening, and for that reason the laws provide that the priest should not be alone in a church where there is a store of temporal goods. This is proved by the texts in the chapters just cited; vii, q. i, *illud*, and ch. *nihil*. The object of this is that one man may take the place of another and continue the celebration, when the other has left it; De consecratione, dist. ii, the last chapter; unless the words of the mass have been begun and not completed, because then he is bound to begin again, since they must not be divided, as in baptism and ordination; dist. xxiii, *quorundam*, and note the gloss there, and ch. *nihil*, where the gloss should also be noted. But if a man attacks the celebrant, to kill him, this is an impediment, nay, it is clearly a mortal danger to the celebrant; and therefore he may leave the office, and consequently may rid himself of the danger threatening him, if he can, even by killing the assailant. The authorities quoted to the contrary are easily answered; for although it is true, as a general rule, that spiritual things are to be preferred to temporal, yet in this case the celebration of the spiritual office is not to be preferred, since the law allows this, on account of the irreparable damage that would follow, and it does not result in the postponement of the spiritual office, because the office may be completed by another, or by the same celebrant, after the danger has been averted. As to the second point, I say without arguments that if he does kill the assailant in defending himself, he may resume the celebration of the office, provided the conditions mentioned in Clem., *si furiosus*, are satisfied. For what he has done is no sin, since he did it by the authority of the law, and by that authority no man sins; xxiii, q. iv,

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ch. *qui peccat* ; hence he does not commit an irregularity ; see the passage of Clem., *si furiosus*, above cited. So there seems to be no impediment to prevent him celebrating, as Clement proves in the passage quoted.

Whether one who is attacked while baptizing, ordaining, confirming, anointing, or celebrating the several sacraments may postpone the celebration of those sacraments, though begun ?

[Ch. lxxxv.]

In the fourth place, the same question, arguments, and solution apply to one who is baptizing, ordaining, anointing, or celebrating the several sacraments. May he postpone their celebration for the sake of his own protection, even if he has begun it ? And in all these cases the answer is the same as above.

Which is to be preferred, the death of a priest who is attacked while he is baptizing a child at the point of death, or the eternal life of the child, lest he should die without baptism ?

[Ch. lxxxvi.]

My fifth question is this : A priest is baptizing a child who is at the point of death, and an attack is made on him with intent to kill him ; which should he rightly choose, to finish the celebration of the sacrament, that the child may not die without baptism, and himself to be killed ? or, on the contrary, should he choose to save his own life, and to allow the child to die without baptism ? In the same way, put a question of a priest delaying the Body of Christ to a sick person at the point of death.

As to the first question, it appears that the priest ought rather to allow himself to be killed than the child to die without baptism. For if the child dies without baptism, he dies eternally, as Augustine proves, writing to Peter the Deacon, De consecrat., dist. iv, *firmissime*, and ch. *regenerante*, and ch. *nulla*, in the same "distinctio." The Apostle shows, in the Epistle to the Ephesians, ch. iv, that all are condemned for the offence of one. Thus original sin, if its effect is not extinguished by the sacrament of baptism, leads to eternal damnation ; but the priest only dies temporally, provided that he has the other requisites for eternal salvation ; but temporal death is to be accounted less than spiritual. So Augustine argues ; xxiii, q. iv, *displicet*, and ch. *ipsa pietas* ; therefore the priest should rather choose to die, in order that the child may not perish eternally. Moreover, of two evils the less is to be preferred ; dist. xiii, *nervi testicularum*, and similar passages ; but temporal death is a less evil than eternal ; xxiii, q. iv, ch. *ipsa pietas*, and ch. *displicet*. And the death of the child is eternal ; De consecr., dist. iv, ch. *firmissime*, and ch. *nulla*, and ch. *regenerante*. But the death of the priest

is temporal, and therefore to be preferred. Moreover, the greatest act of charity is that one should love one's neighbour as oneself ; De Pœnit., dist. ii, *proximos*, and § *proinde*, and ch. *caritas est, ut mihi videtur*. But if this priest should prefer his own temporal life to the eternal salvation of the child, he would not be loving him as himself, and so would lack charity, as is proved. For eternal life excels temporal life beyond all comparison. Therefore, by preferring temporal life for himself to the eternal life of his neighbour, he loves himself far more than his neighbour, and so abides without charity. Moreover, that course which is followed by the fewer evils is to be preferred ; but the death of the priest is followed by a less evil than the death of the boy without baptism ; therefore the death of the priest is to be preferred. The major is proved. For the rule in morals is this, that more evils, other things being equal, are worse than fewer evils, and more to be avoided. This is proved by dist. xiii, can. *nervi*. The minor is proved ; for if the priest's life should be preferred, two evils follow, namely, the eternal death of the child, as I showed above, and neglect of the cure of souls, which is a mortal sin ; De æta. et qualitate, can. *cum sit ars*. But if the priest's temporal death should be preferred, only one evil follows, namely, temporal death, which, if regard is had also to the quality of the act in itself, is beyond comparison a less evil than perpetual death ; and so we must conclude as above.

The contrary view seems to be supported by the texts which speak in general terms of allowing any man to defend himself in case of necessity. I need only quote Clem., *si furiosus*, a passage often cited above. This is confirmed by the laws which say that charity begins with oneself ; C. De servit. et aqua, l. *præses* ; and De iureiurando, ch. *petitio*.

Solution : In the examination and solution of this question we must examine cases which are free from doubt. For there are such cases in the problem before us. Thus, if we suppose that the child might be baptized by another, even a layman or a woman, in case the priest should leave the celebration of the sacrament, there would be no doubt that the priest ought to prefer his own safety ; for where the child might probably live until the danger had been dealt with, and where this is practically certain, I should consider it beyond all question that the priest should prefer his own safety ; nor do the reasons cited conclude the case to the contrary. Let us suppose the question to arise, not in the case of an infant, but of an adult, who, though he does not receive the baptism of water, will none the less die, if he has the true faith, with the baptism of water. Still I should not consider the question doubtful, but I should rather say, as above, that the safety of the priest should be preferred. But we have to discuss the case of a child who is certain to die without baptism, if the priest leaves the ceremony. Or the question might be doubtful, where there was a probable doubt on the matter.

In the first case, where the matter is certain, I should consider that the temporal death of the priest should be preferred, on the authority of the laws above cited ; and I base my opinion on vii, q. i, § *hoc etiam*, the words *cum*

vero specialiter, arguing from the converse case, and the note of the gloss there. For where the question is of a single bishop, and the church cannot be preserved if he flees, he ought to expose himself to death for its sake, as in the passage cited. This applies with great force to the case of a priest and his own parishioner, and I am moved to this conclusion by the reasons above given.

But where there is a reasonable doubt whether the child will die or will live until the danger is over, whereas the death of the priest, if he should not leave the ceremony, is certain, I should still think that the death of the priest is to be preferred, since, when matters are uncertain, there is no certain place for conjecture; ff. De verbor. obligationibus, l. *continuas*, § *illud*. But where there is reasonable doubt on both sides, I should be of the same opinion as in the first case above, as regards the sacrament of baptism.

But in the sacrament of the Body of Christ, if the gloss on De pœnis et remiss., ch. *quod in te*, which says that the viaticum is not a sacrament of necessity, were true, then the question would not be very doubtful. But that gloss is not true, and is contradicted by another gloss on De transaction., ch. *veniens*, the first gloss; and the latter is true, as is noted on De sacrament. non iterand., in the rubric. The text of De pœn. et remissionibus, ch. *omnis*, seems to support this. Nevertheless, even assuming it to be true that it is a sacrament of necessity, I should still say that the temporal life of the priest should be preferred. I am moved by the consideration that, even if a man dies without receiving the Body of Christ, the omission not being his own fault, nor due to his contempt, he does not die eternally, as in baptism. For this reason the present case is not concluded by the reasons above given. I should say the same of the sacrament of penance, because a man who dies even without oral confession, where this is not his own fault, is saved by the virtue of repentance alone, as is noted in De Pœnit., dist. i⁽⁷⁾, in the summary, and in § *his ita*. I should say exactly the same of the sacrament of unction.

Whether a monk may defend himself without the licence of his abbot?

[Ch. lxxxvii.]

Sixthly, I ask whether a monk may defend himself without the licence of his superior. It seems that he may not. For a monk does not meditate, and ought not to meditate, an act of volition, except by the leave of his superior, because without his leave he lacks the faculty of willing and not willing; xii, q. i, *nolo*, and ch. *non dicatis*; Sext, De electione, *quorundam*, and ch. *si religiosus*; and Clem., De procuratoribus, *religiosus*. But this act of defence proceeds from mere free choice, because a man can choose not to defend himself; therefore he may not do so without the leave of his superior. Moreover, a monk is dead to the world; xvi, q. i, *Monachi*, and

ch. *placuit*; therefore acts which tend to the defence of life are not competent to him. Moreover, even acts which tend to good are forbidden to a monk without the leave of his superior, such as making vows, travelling abroad, and the like, by the laws just cited. An argument to the contrary is that the defence of one's own person is an act arising from natural instinct, and not disapproved by law divine or other; therefore it is lawful for a monk, since he is not dead to natural acts, but only to civil acts, as appears from the laws above cited.

Solution: I think that if a monk can obtain the leave of his superior to defend himself without the delay being dangerous, he ought to ask it. This is proved by the laws cited in the first part of the discussion. But if he cannot obtain the leave of his superior, because the latter is not present, and there is danger in delay, then he may defend himself without the leave of his superior. My reason is, that this is an act allowed by natural law, which the superior could not without cause absolutely forbid, perhaps even the Pope could not, since nature has sanctioned it, and in these matters he is not regarded as being subject to his superior, any more than he would be if the superior were absolutely and without cause to forbid him food and drink. I rely on the gloss on xii, q. i, ch. *non dicatis*. For the gloss there asks whether a monk may give alms to a poor man who will die of hunger, unless he receives aid, without the leave of his superior, and it holds that he may. For he is bound, in a case of necessity like this, to provide, if he can, for the life of another by an act otherwise forbidden to him; how much more, then, may he provide for his own life by an act dictated to him by nature! I see no reason why he should not; and Raymond even, in the summary of *De negot. sæcularibus*, § *sed quæritur circa hoc*, says that if the abbot should forbid him, he still ought to do it, because then he would be obeying, not man, but God; dist. viii, *quo iure*.

Whether a slave may defend himself without the command of his master?

[Ch. lxxxvii bis.]

The seventh question is, whether a slave may defend himself in this way without the command of his master. It seems that he may not. For the acts of slaves are deemed null; C. De rei vind., l. *servum*; ff. De iudic., l. *vix certis*; ff. De acquir. hæreditate, l. *si quis mihi bona*, § *iussum*. On the contrary, at the present day masters have no power of death over their slaves; ff. De his qui sunt sui vel ali. iuris, l. i. This is confirmed. For a master cannot absolutely forbid natural actions to his slave, if the prohibition would cause the death of the slave; see the law last above cited. Solution: as in the last chapter in the case of a monk.

Whether persons outlawed, who may sometimes, according to the statutes of states, be killed with impunity, may defend themselves ?

[Ch. lxxxviii.]

The eighth question is, whether persons whom any one may kill with impunity, such as outlaws, concerning whom municipal laws sometimes ordain that they may be attacked with impunity, may defend themselves. It seems that they may not. For if violence is lawfully inflicted by a private person, it is not lawful to defend oneself; ff. *Ad legem Aquiliam*, l. iv. But here it is lawfully inflicted, because a law gives authority; ff. *De acquir. possessione*, l. *iuste*. This is confirmed thus: If violence is inflicted by a public person, it is not lawful to defend oneself; ff. *De iniur.*, l. *iniuriarum*, § i; ff. *De rei vindic.*, l. *qui restituere*. But here the private person is in a quasi-public position; for a law makes him its servant by allowing him to punish; and a law can do this—I mean, it can give jurisdiction to a private person; ff. *De iurisd. omn. iudic.*, l. *et quia*; and *Ne prælati vices suas*, ch. i, where the point is noted. Therefore, we may infer that it is not lawful for him to defend himself.

To the contrary is the argument that this is a private person; and even if he were a public person, it appears that violence is inflicted unlawfully when it is inflicted without the due course of law being observed; C. *De sent.*, l. *prolatam*; and *De probationibus*, ch. *quoniam contra*.

Secondly, I think the words of the law must be considered; for sometimes a law permits a thing in the sense that no law forbids it; xxxi, q. i, *hac ratione*. Sometimes a law permits a thing contrary to human ordinances, as formerly to contract a marriage in the fifth degree; xxxv, q. iii, *quædam*. In a third sense, a law permits a thing in the sense that it tolerates it; it does not make an act otherwise unlawful lawful, but it does not punish an unlawful act which remains unlawful, as the text says in dist. iv, can. *denique*. For those who eat flesh at midnight of Sunday are not punished; and the text says the act is permitted, meaning that it is not punished because of the numbers and the scandal. So in other cases adultery is permitted, in order to avoid homicide; xxxiii, q. iii, *si quod verius*; and yet adultery is not made lawful by the law which permits it in this sense, but the act remains unlawful, and only the penalty is remitted. So in the case proposed; if the law permits the act in the sense of tolerating it, and remitting the penalty, the act remaining unlawful, because of the odium attached to the outlaw, then I should think that the outlaw may defend himself; and the citations given above do not conclude this question. But if the law should permit the act in the sense of positively making it lawful instead of unlawful, then the answer would be different. These modes of permission are noted by the gloss on dist. iii, *omnis autem lex*.

Against whom may this particular war be declared ?

[Ch. lxxxix.]

We must consider the fifth question, which is, against whom this particular war is allowed. And as to this, many questions arise.

Is it lawful against a superior ?

And the first question is, whether a man may declare this war against his own superior. The gloss on ff. De iustit. et iure, l. *ut vim*, says not ; it is based on ff. De rei vindic., l. *qui restituere* ; and ff. De iniuriis, l. *iniuriarum*, § i. The text of xi, q. iii, ch. *qui resistit*, supports this. I think that the gloss, as it stands, is not quite accurate, but that a distinction must be drawn. Either it is clear that the superior is acting unlawfully, or it is clear that he is acting lawfully, or there is a doubt. In the first case, I think resistance should be offered ; C. De iure fisci, l. *prohibitum* ; and C. De metatis, l. *devotum*. And this is especially so when what he does is something outside his office, not concerning himself. In the second case, resistance should not be offered ; ff. De rei vindic., l. *qui restituere* ; and ff. De iniuriis, l. *qui iniuriarum*, § i. In the third case, it should only be offered if what has been done is something which cannot later be repaired. For such things, when once done, cannot be regarded as undone ; ff. De captivis, l. *in bello*, § *facti*. For in such cases the law which forbids an appeal before final judgement allows an appeal, as is noted in C. Quor. app. non recipiuntur, l. *ante sententiæ tempus*.

Is it lawful against a judge, even if he acts unjustly ?

[Ch. xc.]

Secondly, the gloss on the said law, *ut vim*, asks, What if a judge or magistrate acts unjustly ? Martinus answers that no resistance should be offered, relying on ff. De iniuriis, l. *iniuriarum* ; but action should be brought against the magistrate, during his term of office if he is one of the lower magistrates, or after it is over if he is one of the higher ; ff. De iudic., l. *pars literarum* ; and ff. Quod met. causa, l. iii. I do not think this gloss is true where the act is an irreparable one. Suppose that a judge attacks me with the intention of killing me, and that he is one of the higher magistrates, am I to wait until his term of office is over ? or, if he is one of the lower magistrates, must I wait until my complaint can be brought before the president ? Certainly not ; because such acts, as I said above, are irremediable ; ff. De captivis, l. *in bello*, § *facti*.

Is it lawful for a son against a father ?

[Ch. xci.]

The third question is, whether it is lawful for a son against a father. It seems that it is not, because of the right of "patria potestas"; C. De pat. potest., throughout. This view is confirmed. For a son may not attack himself, therefore he may not attack his father, since they are regarded as one person; C. De impub. et aliis substit., the last law; Instit., De inutil. stip., § *ei qui*; C. De agric. et cens., l. *cum scimus*; Authent., De iureiurando a moriente præstando, § i. To the contrary is the argument that this mode of defence comes from natural law, as I proved above in the third principal part; and it is not disapproved by any law, but rather approved by all, as I there showed. Therefore "patria potestas," being an institution of civil law, does not destroy this right belonging to a son, since natural rules are not destroyed by civil. Instit., De iure nat. gent. et civili, § *naturalia*; dist. v, *ius naturale*.

Solution: I say that if a father does something to the son to correct him, the act being one that is permitted by the right of "patria potestas," and does not exceed that right, the son may not defend himself, because herein the civil law which introduced "patria potestas" limits natural law, which it can do, as I showed above. But if the father does something to the son which exceeds the rights allowed him by "patria potestas," then I should think that he may defend himself. And this applies to a son living in "patria potestas"; for if a son has been emancipated, the question is simpler. The answer to the citations to the contrary appears from what has already been said.

Is it lawful for a monk against his abbot ?

[Ch. xcii.]

The fourth question is, whether it is lawful for a monk against his abbot. It seems that it is not, for a monk cannot exercise his will without the licence of his abbot; xii, q. i, *nolo*, and ch. *non dicatis*; De statu monach., *cum ad monasterium*. But this act is controlled by the will, since the monk can refrain from it; and the superior does not give his licence, but rather a tacit and implied prohibition, which has more weight than a verbal one; ff. De ædilit. edict., l. *si tamen*, § *ei quod*; ff. De legi., l. *de quibus*, at the end; De appellationibus, *ad audientiam*, and ch. *ut nostrum*, and ch. *dilecti*. This is confirmed thus: For a monk is dead to the world; xvi, q. i, *monachi*, and ch. *placuit*; and Authent., C. De sacr. sanct. ecclesiis, *ingressi*. Therefore an act in defence of his earthly life is not competent to him.

On the other hand, it appears that this act proceeds from natural law, and that no positive law disapproves of it, although it is limited thereby. Therefore it is not denied to a monk, who, though he is civilly dead, yet is

not so naturally, as appears from the laws above cited. Solution : If the superior attempts to do something to the monk which the common law allows him to do, by way of correction or the like, or in accordance with the rules of the order, then the monk may not resist ; nor in this case should he even be heard on appeal ; De appell., *cum speciali*, and ch. *de priore*. But if the superior attempts to do something to the monk which does not belong to his office, as regulated by law or by the rules of the order, then he may defend himself, especially where delay would be dangerous, as if the abbot should attack the monk to kill him on the spot ; which is only natural when we remember that a monk may even lay an accusation against an abbot, if he does anything contrary to his duty ; De accusat., ch. *ex parte*, and same title, ch. *cum olim*. ✓

Is it lawful for a slave against a master ?

[Ch. xciii.]

The fifth question is, whether it is lawful for a slave against a master. It appears that it is not, since a master has absolute power over a slave ; ff. De his qui sunt sui vel alieni iuris, l. i. This is confirmed thus : For a slave is bound to help his master in war ; otherwise he is punished ; ff. De S. C. Silaniano, l. *si quis in gravi*. Therefore he may not attack him ; De nat. ex lib., the single chapter ; and De restit. spol., ch. *conquærente* ; ff. Si servit. vind., l. *altius* ; ff. De condic. indebit., l. *frater a fratre* ; dist. xxvi, *una tantum* ; dist. xxv, the last canon ; xvi, q. i, *Silvester* ; ff. De fideiuss., l. *tutor* ; ff. De admin. tut., l. *quotiens*.

To the contrary : At the present day the power of masters over slaves has been restricted ; ff. De his qui sunt sui vel alieni iuris, l. i. For to-day they have no power to put them to death, nor to treat them with extreme severity. Therefore, &c. Solution : As I said of the monk, so here, if the master attempts to do something to the slave which the laws permit him to do, the slave may not defend himself. For in this an act which proceeds from natural law is limited by positive law, which limits the power of masters over slaves. But if he attempts to do something which is beyond what the law allows, then the answer is otherwise, because here, although slaves are not recognized as regards civil acts, yet as regards natural acts they are, and this is a natural act. +

This helps us to the solution of similar questions. Is it lawful for a vassal against his lord ? a pupil against his master ? a soldier against his officer ? a wife against her husband ? These questions admit of a uniform solution, which is, that if the act attempted is one which the law permits, defence is not lawful. If it goes beyond this, and is contrary to legal duty, then otherwise, as I showed fully above. This brief discussion shows us against whom defence is lawful, and the rule above given will solve an infinite number of questions.

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On behalf of what persons is it lawful to declare this particular war ?

[Ch. xciv.]

The sixth point which we have to consider is this : On whose behalf is it lawful ? And first as to the persons on whose behalf it is lawful. And I take it as undoubted that it is lawful in defence of oneself. This is proved by the text of ff. De iustit. et iure, l. *ut vim* ; and ff. De vi et vi armata, l. i, § *vim vi* ; and Ad leg. Aquil., l. iv ; and the same title, l. *scientiam*, § *qui cum aliter* ; and clearly in Clemen., De homicidio, i. Other cases are examined below.

Is it lawful for a father on behalf of his son ?

[Ch. xcv.]

And first I ask whether it is lawful for a father on behalf of his son. Treating subjects which admit of no doubt without arguments, we must say that it is. For a father loves his son as himself ; ff. Quod met. causa, l. *isti quidem*. For the son carries on his personality into the future ; ff. De verb. sig., l. *liberorum*, at the end ; also because they are regarded as one person ; C. De impub. et aliis substit., the last law ; Authent., De iureiur. a moriente præstito, at the beginning ; Instit., De inutil. stip., § *ei quem*. This point is clear. Equally so is the converse case of a son on behalf of his father.

Is it lawful for a husband on behalf of his wife ?

[Ch. xcvi.]

The second question is, whether it is lawful for a husband on behalf of his wife. Clearly it is, for an injury inflicted on a wife is inflicted on the husband, and he may bring an " *actio iniuriarum* " for it ; and even a betrothed person may do so ; ff. De iniuriis, l. *item apud*, § [*si sponsum sponsum*]. And a husband may kill a wretch found committing adultery with his wife ; ff. De adulteriis, l. *marito*, and l. *capite quinto* ; C. the same title, l. *Gracchus* ; even one who gossips with her after being warned, according to the Authentics, and he does not contravene xvii, q. iv, *si quis suadente*. As to one who lays violent hands on a clerk for this cause, see De sent. excommunicationis, ch. *si vero*, § *nec ille*.

Is it lawful on behalf of a brother, sister, and other relations ?

[Ch. xcvi.]

The third question is, whether it is lawful on behalf of a brother, a sister, and other relations, and persons who are not related. And the gloss on ff. De iustit. et iure, l. *ut vim*, says that the affection should be considered. It quotes ff. Quod met. causa, l. *isti quidem* ; and ff. Mandati, l. *cum servus*.

Others prefer to say that it is lawful on behalf of all relations. Their argument is, that if a man does an injury to one relation, he is regarded as doing it to all, although the others cannot bring the " *actio iniuriarum* " ; ff. De iniuriis, l. *lex Cornelia*, at the beginning. They confirm this view by the argument that it is lawful to repel force by force in defence of property ; C. Vnde vi, l. i ; and ff. De vi et vi armata, l. iii, § *eum igitur*. And one who wishes to repel force by force in defence of his property may summon his friends and relations. Therefore he may help his friends and relations. And so they conclude that it is lawful on behalf of a relation, without any qualification. This opinion seems to be confirmed. For man owes a duty to man ; ff. De servis exportandis, l. *cum servus*. Therefore, in accordance with that duty, he may help him. This is confirmed by C. De appell., l. *addictos* ; better by ff. De appell., l. *non tantum* ; where, too, a stranger appeals on behalf of a person condemned in a criminal trial, even against that person's wish. This is supported by C. De liberali causa, l. iii. Jacobus Buttrigarius, on the law *ut vim*, draws the following distinction : Either I desire to defend the injured person of my own motion, and without request from him, and I can do this by way of legal process, but not by an act ; and in this sense are understood the laws just quoted, *addictos*, *non tantum*, and C. De lib. causa, l. iii ; or I desire to do this, not of my own motion, but at the request of the injured person, and then I may do so even by an act ; ff. De vi et vi armata, l. iii, § *eum igitur*. Others draw a distinction. Either the assistants belonged to the company of the injured person, and then they might repel an injury inflicted on his person ; the proof of this is in ff. De iniuriis, l. *item apud*, § *si quis virgines* ; otherwise they may not, as the gloss on Vnde vi, l. i, lays down without qualification, where Cinus quotes this opinion in the antepenultimate question. Others, like Jacobus of Ravenna, say without qualification that it is lawful ; and they give this reason : Another may help me in my affairs ; ff. De negot. gestis, l. i. Much more may he help my person, since the person is to be preferred to things ; C. De sacrosanctis ecclesiis, l. *sancimus*. He quotes in support C. De adulterio, l. *Gracchus* ; and if you say that in that case it was a son, he meets the difficulty by ff. Ad leg. Aquiliam, l. *liber homo*. No difficulty is raised by ff. De vi et vi armata, l. *cum fundum*. For there the person wished to act after an interval of time, which even the injured person himself would not have been allowed to do. No difficulty is raised, according to him, by ff. De iustit. et iure, l. *ut vim*, where it says, " for the protection of one's own body." He meets this by ff. De servis exportandis, l. *si servus*. This opinion seems to be followed by Cinus in C. Vnde vi, l. i, in the antepenultimate question.

In this conflict of authority, I should think we ought to consider, inasmuch as I have framed the question to refer indifferently to relations and to strangers, whether a relation or a stranger may repel violence done to another with force, as he might violence to himself, while avoiding the penalty of irregularity whether it be a clerk or a layman who kills or wounds

another in this case. A question may also be asked, in both cases, whether they may do so without incurring some other penalty of statute or canon. If we take the first question, I say that according to Clement., *De homicidio, si furiosus*, a man only avoids the penalty of irregularity if he does the act in defence of himself, not in defence of another, even a father or son. The text shows this by the words, "we hold the same of one who, not being able to avoid death otherwise, kills or wounds his own assailant." It speaks, then, of his own assailant, not of the assailant of another. This is also noted by the gloss there on the word "*suum*". In this case, then, I think the answer plain, as it is in the text. But if we ask whether he may act in this way, and avoid other penalties, statutory or canonical, we must first make a distinction. Either we speak of the penalty of excommunication, if a man strikes a clerk in this way, in the act of forcibly repelling violence done to another; and then I agree with Innocent that, if he is defending father, mother, wife, son, or daughter, he escapes the sentence of excommunication. He quotes ff. *Quod met. causa*, l. *isti quidem*; and ff. *De S. C. Silaniano*, l. i, § *si vir*. And the reason of the difference between this case and the one preceding is, that irregularity may be contracted even without wrongful intention, as may be seen where a judge gives a lawful order for a man to be put to death; dist. li, *qui in aliquo*. But excommunication under that canon requires an instigation of the devil; xvii, q. iv, ch. *si quis suadente*. But if the person is assisting a stranger, he does not escape the penalty of that canon, though he may have acted at the request of the injured person a thousand times over. Or we may speak of another penalty, personal or pecuniary; and then I draw a distinction, according as those who desire to repel force from one who has suffered violence are related to him or are strangers. If they are related, I follow the gloss on ff. *De iustit. et iure*, l. *ut vim*; limiting it by ff. *De iudic.*, l. *in privatis*; and ff. *De iniuriis*, l. *lex Cornelia*, at the beginning. If they are strangers, then they may either be members of the company of the person who suffered the violence, and then it is lawful; ff. *De iniuriis*, l. *item apud Labeonem*, § *si quis virgines*; or they may be not members of his company, or they may desire to repel the violence after an interval, and then they cannot do it; ff. *De vi et vi arm.*, l. *cum fundum*; because not even the injured man himself could do so. What I have said applies to defence by act. But they might make a legal defence even after an interval, where the laws allow this; ff. *De appell.*, l. *non tantum*; *De liber. causa*, l. iii; and *C. De appellationibus*, l. *addictos*. And for this reason I do not think that the opinion of Jacobus Buttrigarius is true, when he says without qualification that they may make a legal defence. For this is not true without qualification. For there are cases in which a third party may not bring an action or an accusation on behalf of one who has suffered injury. I take an ordinary example in private delicts. So, then, it is true only where the law allows it. If, however, the defenders desire to repel the violence at once, then I should draw the same distinction as Jacobus. Either they are summoned by the

person who has suffered the violence ; and then it is lawful. For one who suffers violence may summon his friends to defend his property ; ff. De vi et vi armata, l. iii, § *eum igitur* ; therefore he may do so to defend his person, which is far more important ; C. De sacrosanct. ecclesiis, l. *sancimus*. Or else they are not summoned, and then it is lawful. The text is in Sext, De sent. excom., ch. *dilecto*. This is supported by xxiii, q. iii, *non inferenda*, and ch. *fortitudo* ; De sent. excom., *quantæ*. Also by the notes on C. De commerc. et mercatoribus, l. ii. And so I think that in this matter the opinion of Jacobus of Ravenna is true. The text is in ch. *dilecto*, already cited. For the text there says, " since any one is allowed to give his help to his neighbour or relation, to repel an injury from him."

Whether a man is bound to defend another against being killed ?

[Ch. xcvi.]

The fourth question is, whether one who sees that another is about to be killed unless he helps him, is bound to help him. It seems that he is by ff. De agnoscendis liberis, l. *necare*. This is confirmed by the duty which one man owes to another ; ff. De servis exportandis, l. *servus*. It is confirmed again thus : An error which is not opposed seems to be approved ; dist. lxxxiii, *error*, and can. *consentire*, and can. *quid enim*. For one may receive a reward for relieving another from duress ; ff. Quod met. causa, l. *metum*, § *sed licet*. This is confirmed thus : In some cases there is a special provision that a man is bound so to help another ; ff. De S. C. Silaniano, l. i, § *hoc autem* ; and C. the same title, the last law. Therefore the common law is the converse ; ff. Ad municipalem, l. i ; and ff. De legibus, l. *ius singulare*. A gloss holds that a man is bound to help by word, but not by act ; ff. De reg. iuris, rule *culpa*. Nor is the duty which one man owes to another an objection, because he only owes it if he can act without danger to himself ; ff. De oper. lib., l. *habet* ; and ff. De verbor. significatione, l. *Nepos Proculo*.

The fifth question relates to those who are bound to defend others from violence.

[Ch. xcix.]

And as to this many questions arise.

Whether a vassal is bound to help his lord ?

And the first question relates to a vassal. And there is no doubt that he is bound to help his lord ; otherwise he loses his fief ; see the Usus Feudorum, Quæ fuit prima causa beneficii amittendi, ch. *prima autem causa*, § *item qui dominum*, and the following section.

Whether a slave is bound to help his master ?

[Ch. c.]

The second question relates to a slave ; and it is clear that he is bound to help his master, from the text of ff. De S. C. Silaniano, l. i, § *hoc autem* ; and C. the same title, the last law.

Whether a soldier is bound to defend an officer in a war ?

[Ch. ci.]

The third question relates to an officer in a war ; and it is clear that a soldier is bound to help him, if he can ; otherwise he is punished with death ; see the text of ff. De re milit., l. *omne delictum* ; and ff. the same title, l. iii, the last section.

Whether a vassal, seeing his lord attacked on one side, and his father on the other, &c. ?

[Ch. cii.]

The fourth question is this : A vassal sees his lord attacked on one side, and his father on the other, and each is equally in mortal danger unless he is helped, and the vassal can help only one of them ; whom should he help, his father or his lord ? The gloss on xxii, q. v, *de forma*, says that a vassal is bound to help his lord against his own son. The argument is that a son is bound to his father by the law of nature, but a vassal is bound to his lord by the bond of his oath ; Vsus Feudorum, Quæ fuit prima causa benefic. amittendi, the single chapter ; and according to this the question would be decided, because he would be bound to help the lord, to whom he is more closely bound. On this question I should say the opposite. And I am moved by the consideration that a son is bound by a natural bond to the father, of whom he was begotten. He is also bound by a civil bond, because he is under his "patria potestas" ; but he is bound to his lord by a civil bond only, as appears from xxii, q. v, ch. *de forma*, already quoted. But two bonds are stronger than one ; Authent., De consanguin. et uterin. fratribus, at the beginning. This is confirmed by reason of the priority of the obligation, for the paternal bond is prior to that of the lord. Therefore he is bound first to help his father ; ff. Qui potior. in pign. habeantur, l. *potior*, and l. *qui balneum*. This is confirmed thus : The oath to the lord is understood to save any precedent obligation ; for a right acquired by one person is not destroyed by a second obligation ; see the passages quoted, l. *qui balneum*, and l. *potior*. It is also confirmed by De iureiurando, ch. *petitio* ; for in swearing to help his lord, he is not taken to have sworn not to help himself before his lord, because that is his first duty ; C. De servi-

tutibus, l. *præses*. But by fiction of law the father is the same person as the son ; C. De impub. et aliis substitutionibus, the last law, with others to the same effect. Therefore, &c.

Whether a clerk, seeing his bishop attacked on one side, and his father on the other, each being equally, &c. ?

[Ch. ciii.]

The fifth question is this : Suppose a clerk sees his bishop attacked on one side, and his father on the other, and each is equally in mortal danger unless he is helped, and the clerk can help only one of them ; whom should he help, the bishop or the carnal father ? Hostiensis, on De excess. prælat., ch. *gravem*, argues from the word “*fratri*,” which is there used, that clerks are more closely bound to their spiritual, than to their carnal fathers. He supports this by De translatione, ch. ii. If that opinion were true, the question would be solved. But on this question my own view is the same as on the last. I cite De postulatione, the last chapter^o. For the text there says, if a clerk brings an action against the Church, and not on behalf of his own kindred, he loses his benefice ; therefore it is clear that he might do so on behalf of his own kindred. I cite De iureiur., ch. *petitio*, arguing as I did on the last question ; and I am moved by the reasons given in the last question ; and the gloss on xxx, q. iii, ch. *pittacium*, on the words “*multo magis*,” holds that in rendering temporal services we are more bound to a carnal father than to a spiritual. But in rendering reverence, the contrary is the case. The same point is noted by the gloss on dist. xxx, can. i. This is supported by the notes on dist. lxxxvi, *non satis* ; and dist. xlii, can. *quiescamus*.

For what things is it lawful to declare war ?

[Ch. civ.]

As we have considered above in this part of our subject whether, and for what persons, it is lawful to declare this war, our next question now is, whether it is also lawful to declare this war for the defence of things ? And many questions arise about this.

Whether it is lawful for things lawfully possessed ?

And first as to things lawfully possessed ; and as to these there is no doubt. The text is in C. Vnde vi, l. i. It is supported by l. iii, § *si quis autem*, the words *eum igitur*. Besides these, there is a section in ff. De vi et vi armata ; and De restit. spoliatorum, ch. *olim*.

Whether it is lawful for things unlawfully possessed ?

[Ch. cv.]

The second question is, whether it is lawful for things unlawfully possessed. The gloss on C. Vnde vi, l. i, treats of this question. And it seems that it is not, arguing from the converse sense of that text, which is a valid argument ; ff. De offic. eius cui mand. est iurisd., l. i, § *huius rei* ; De regularibus, ch. *cum virum* ; and dist. xxxii, can. *hospitiolum*. Arguments to the contrary are afforded by ff. De vi et vi arm., l. i, § *qui vi a me* ; and the same title, l. *cum fundum* ; and ff. Quod met. causa, l. *si cum exceptione*, § *Pedius*. Solution : For this apparent conflict of the laws, the gloss on the said l. i gives several solutions. The first is, that the word "maxime" is to be understood there ; and this gets rid of the contradiction, because it makes it lawful even for a wrongful possession. The second is, that the beginning of the law is to be taken with the ending, so that it reads, "recte licet." But the objection to this is that the law says in the middle, "sine vitio." Therefore it implies that the result would be different when the possession is "cum vitio." The third is, that it is always lawful for a lawful possessor, but not always for a wrongful possessor. For if the owner should come at once, a wrongful possessor may not resist him ; ff. De vi et vi armata, l. iii, § *eum igitur*. The fourth is, that the correct interpretation is, "neither by force, nor secretly, nor by licence" ; but this gloss is not approved. Jacobus of Ravenna, however, follows it so far as concerns one who wishes to defend his possession, so that if force is used by the person from whom the other is wrongfully detaining the possession, the other may defend it at the time, but not after an interval. But if he is wrongfully detaining it from another, then he may defend it at any time. And this is what the law means by saying that wrongful possession is good against strangers ; ff. Vti possid., l. ii ; ff. De acquir. poss., the last law ; ff. Si servit. vind., l. *loci corpus*, § *competit*. Here Jacobus seems to think that I may eject a clandestine possessor, if his clandestine possession is against me, because clandestine possession is wrongful ; ff. De acquir. poss., l. *cum quis*. For this opinion he cites ff. Quod cum eo, l. *si servus*. This opinion seems to be shared by the gloss on ff. Vti poss., l. i, § *interdictum*, in the middle of the big gloss on that passage, "nec tamen volo," etc. Cinus there holds the contrary, on the ground that no law can be found which provides that I may eject a clandestine possessor. Moreover, the law says I may repel force with force ; but one who enters clandestinely does not use force, since secrecy and force differ ; ff. De acquir. possessione, l. *clam possidere*, § *qui ad nundinas*. The opinion of Jacobus might be true of a possessor by licence, after he has refused to restore possession. For then he appears to be robbing the owner, as is noted in C. De acquir. possessione, l. *vitia*.

In this variety of opinions, I should think the second solution of the gloss would be true ; and this is also the one followed by Petrus de Bellapertica, on the said l. i, who, however, amplifies it as follows : "I, who wish to repel

force, possess either lawfully, or unlawfully. If lawfully, either I wish to repel it at the time and within the limits of justifiable defence, and this I can do ; see the said l. i ; and ff. De vi et de vi arm., l. i, § *vim vi* ; or after an interval, and then I cannot do it ; ff. De vi et vi armata, l. iii, § *si quis autem*, the words *eum igitur*. In the second case, that is to say when I possess unlawfully, either I possess unlawfully as against you, whose force I wish to repel, or as against another. If against you, then my possession is either forcible, or secret, or by licence. If forcible, then either you come to recover it at once, in which case I may not resist you, as appears from C. Vnde vi, l. i, if we argue from the converse sense." And this is its true and correct meaning, if it is rightly considered, together with the passages cited to the contrary. But if you come after an interval, then I may resist you, because you may not recover it on your own authority after an interval, and you would even incur a penalty by doing so ; C. Vnde vi, l. *si quis in tantam* ; and understand the phrase "after an interval" in the sense given by the gloss on ff. De vi et vi arm., l. iii § *eum igitur*. But if my possession is not forcible, but by licence, then after I have refused to give it up you may at the time repel force with force, and I may not resist. For by my refusal I am deemed to rob you ; C. De acquir. poss., l. *vitia* ; and from that it follows that you may repel force with force ; but before my refusal, you may not, although I may revoke the licence ; ff. De precario, l. *cum precarium*. But if my possession is clandestine as against you, then whatever the gloss on ff. Vti poss., l. i, § *interdictum*, and Jacobus of Ravenna on C. Vnde vi, l. i say, I agree with Cinus that you may not eject me, but you may enter, and if I do not admit you, my possession thereupon becomes forcible ; ff. De acquir. poss., l. *clam*, § *qui ad nundinas* ; and then you may eject me. But if my possession is not wrongful as against you, but as against a third person, then if you try to use violence against me at any time, I may repel your force with force ; ff. Ex quibus ca. in poss. eatur, l. *Fulcinius*, § *quid si adversus*. I have put forward these views with all respect to the opinion of the many distinguished persons who dispute on this doubtful point, submitting the opinions of all alike to corrections which seek after truth.

Whether one who has a right to defend property, and defends it within the limits of justifiable defence, escapes the penalty of irregularity, if he kills or wounds another ?

[Ch. cvi]

The third question is whether, if a man, in repelling force with force in defence of his own property, happens to kill or wound the assailant, he escapes the penalty of irregularity. And I suppose him to act within the limits of justifiable defence ; otherwise the question would not arise. And it seems that he does escape it. For one who is defending his person escapes that penalty ; Clem., De homicidio, *si furiosus*. Therefore the conclusion applies to the defence of property. For the laws which allow force to be repelled with force do not

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distinguish between person and property, but allow it in either case ; C. Vnde vi, l. i ; and ff. De vi et vi arm., l. i, § *vim vi* ; and ff. Ad legem Aquiliam, l. *scientiam*, § *qui cum aliter*. Opposed to this is the passage in Clemen., De homicidio, *si furiosus*, quoted above. For the text there speaks strictly of the killing or wounding of one who is himself a killer. And I think this view is true, for the following reason : For a man commits irregularity by killing or wounding, even without a guilty intention, as appears in the case of a judge ; dist. li, *qui in aliquo* ; even by killing accidentally, as is noted in dist. l, *de his* ; and De homicid., ch. *sicut dignum* ; and Ne cler. vel monach., ch. *sententiam* ; and De raptoribus, ch. *in archiepiscopatu*. Any one, therefore, who kills in any manner whatsoever, becomes "irregular," except in the cases excepted by law. So when the case of defence is excepted, the exception must be understood strictly and in a limited sense ; for the law makes an exception only when the law is anomalous, and so the exception is to be strictly understood ; Sext, De reg. iur., rule *quæ a iure*.

Whether a man incurs excommunication by laying hands on a clerk, in defence of his own property ?

[Ch. cvii.]

The fourth question is, whether a man incurs excommunication by laying hands on a clerk in repelling force with force, in defence of his own property. It appears that he does, by xvii, q. iv, ch. *si quis suadente* ; and De sent. excommunicationis, ch. *nuper*, with the notes to that passage. This is confirmed. For he incurs the penalty of irregularity, as in the last question. Therefore he should incur this too, since both are spiritual penalties, and one incurs excommunication more easily than irregularity, as is obvious. Solution : Innocent, in De restit. spoliatorum, ch. *olim*, holds that one who repels force with force does not incur excommunication, provided that he cannot repel it otherwise than by laying hands on the assailant, and that he acts within the limits of justifiable defence. I think this opinion true ; and my reason is, that to incur excommunication by the violent laying of hands on a clerk, there must be present the persuasion of the devil, as is proved by the text of xvii, q. iv, ch. *si quis suadente diabolo*. And if you rightly examine the laws which inflict the penalty of excommunication on one who lays hands on another, you will not find that the laying of hands on a clerk in this case is one of the cases for which the laws declare this penalty. For the laws punish violence ; xvii, q. iv, ch. *si quis suadente*, already quoted ; and De sent. excom., throughout. This is not violence, but repelling violence. They punish recklessness ; De sent. excommunicationis, ch. *contingit*. This is not such ; indeed, by permission of a separate law, they punish it as if it were violence ; the same title, ch. *nuper*. This is an honourable and permitted act. They punish murder, as when instructions are given for a man to be smitten ; ch. *universitatis* ; and Sext,

the same title, ch. *cum quis*. They punish intention, as when one ratifies what was done in one's name ; .ch. *cum quis*, above. They punish negligence ; the same title, ch. *quantæ*. Here none of these conditions is present.

The citations to the contrary are easily answered. The answer to the canon *si quis suadente* has been given above. As to what is said about irregularity, the reason of the difference is clear. For no one incurs excommunication without wrongful intention ; but one may incur irregularity, as to which see the penultimate gloss on Clem., *si furiosus*, often quoted above. †

Whether one may summon one's friends to help in the defence of one's property ?

[Ch. cviii.]

The fifth question is, whether one may summon friends to repel violence done to one's property, and whether they may give help. The gloss on ff. De vi et de vi armata, l. iii, § *eum igitur*, notes that this is allowed, even when the violence is done to property. I think this is true ; and my reason is, that one may oppose an error, as the laws say, wherever it is possible to oppose it. Otherwise, one who does not oppose seems to consent to it ; dist. lxxxiii, *error*, and * ch. *qui consentit*, with the following chapter. Therefore friends may help their neighbour in this, as I said above, because to do so proceeds from the root of charity ; De Pœnit., dist. ii, ch. *proximos*. And if this is allowed, the question is at once solved which might ask whether a man incurs excommunication by laying hands on a clerk, while defending the goods of a neighbour against violence. Because he does not incur it, since this is not one of the things which are punished by the canon, but rather permitted.

Whether, in defending property, one may repel force with force against all those against whom one may use force in defending persons ?

[Ch. cix.]

The sixth question is whether, in defending property, one may repel force with force against all those against whom one may use force in defending persons. Solution : One may do so, among persons capable of holding property ; I exclude slaves, monks, and the like. But I admit that the limits of defence ought to vary with the various quality of persons. For one should act differently and more gently against a father than against an absolute stranger ; and so with each relationship which comes up for consideration, all the circumstances are to be regarded, since these are not defined by law ; ff. De iure deliber., l. i, at the end ; and De offic. iud. delegati, ch. *de causis*.

* Supply xi, q. iii.

*Whether one may repel force with force in defence of things
deposited or lent ?*

[Ch. cx.]

The seventh question is, whether one may repel force with force in defence of things deposited and lent. And it seems that one may not, by C. Vnde vi, l. i, which speaks of things possessed, and rightly. But these things are not "possessed" by a borrower or deposittee; therefore he may not repel force with force in such cases. Solution: In these and the like cases we claim that a man may repel force with force; for the interdict "vi bonorum raptorum" is allowed to a deposittee or a borrower if such things are forcibly seized; ff. Vi bonorum raptorum, l. *prætor ait quæ est lex, § in hac actione*. Much more, then, is a right of defence allowed them; ff. De reg. iuris, rule *inuitus, § cui damus*; and ff. De fonte, the single law; Sext, De reg. iur., rule *qui ad agendum*; also because they are under a liability. Therefore, &c. C. Vnde vi, l. i, is not opposed to this, because although it uses the phrase "in possessione," yet it does not exclude other forms of "detention," for which the laws allow actions to the detainers, as above. Or we may say that the word "possidere" is to be taken in a wide sense, to include lawful detention; ff. De rei vindic., l. *officium*; and the note on De causa possessionis et proprietatis, ch. *pastoralis*.

How may this particular war be declared ?

[Ch. cxi.]

We must consider the seventh principal question, which is, how force may be repelled with force.

*How may force be repelled with force within the limits of
justifiable defence ?*

And the text answers this by saying that it is allowed within the limits of justifiable defence.

*What are the "limits of justifiable defence," and what is
required therein ?*

But the meaning of these words is ambiguous; what are the conditions required for these limits? Doctors agree that they are those which equal the violence inflicted, in quality of arms, and in length of time. Also there must be equivalence in the violent act itself, lest, by exceeding, it be regarded as revenge; but this is a doubtful point.

Whether a poor and feeble man may defend himself with a sword against a strong and vigorous man who strikes him only with the fist ?

[Ch. cxii.]

And in the first place suppose a strong and vigorous man strikes me with his fist, and I am a poor fellow who cannot stand up to him with the fist. May I defend myself with a sword ? It seems that I may, because equality is always to be regarded ; C. De fruc. et lit. expen., the last law ; ff. De arbitr., l. *si cum dies* ; Sext, De reg. iuris, rule *in iudiciis*. On the other hand, if a man tries to rob me by violence, and I, being no match for him in strength of body, strike him with a sword, that would be compensation on a person for injury to property, which ought not to be ; C. De sacrosanct. ecclesiis, the last law.

Jacobus de Arena draws a distinction. One wishes to repel either violence to the person, or violence to property. In the first case I may use arms and any means whatsoever, if matters cannot otherwise be set right ; C. De appell., l. *si quis*. For if I may kill a thief when I do not recognize him, or when I cannot get a judge to help me as to the stolen goods ; ff. Ad legem Corneliam de sica., l. *furem* ; much more may I kill a man when that is the only way of saving my person. In the second case, of violence to property, either the violence done may be redressed by resorting to law, in which case I may not defend my property in any way I like, but only with certain arms, and not with acts, because I ought not to strike a person in defence of a thing, even when the thing cannot be saved in any other way, provided the wrong is capable of being redressed by law. But if it is not, then I may defend my property in any way whatsoever, even by killing the assailant ; ff. Ad legem Corneliam de sicariis, l. *furem*. And in this sense is understood C. Vnde vi, l. i ; and ff. De vi et vi arm., l. iii. § *eum igitur*. Understand, therefore, the phrase "the limits of justifiable defence" in this sense.

Assuming that a man may defend himself "incontinenti," in what sense is the phrase "incontinenti" to be understood ?

[Ch. cxiii.]

The second question relates to the passage of time, because the texts say that it must be done "incontinenti." What does this phrase mean ? Some say that an act is done "incontinenti" if it is done while the offence is being actually committed, but if the injury has already been inflicted, then we ought to resort to a judge. Others say it is done "incontinenti" even if it is done afterwards, before one turns to other business ; ff. Ad leg. Iul. de adulteriis, l. *quod ait*, at the end. Jacobus and Petrus draw a distinction. Either we speak of violence to the person, and then we are said to repel it "incontinenti" if we do so during the actual commission of the act. In this sense is understood ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter* ; De iustit. et iure, l. *ut vim*. Or we speak of violence to things, and then we are said to repel it "incontinenti"

even after the commission of the act, provided we do so before turning to other business ; ff. De vi et vi armata, l. *qui possessionem* ; and the same title, l. iii, § *eum igitur*. The reason of the distinction is, that injury to the person cannot afterwards be repaired, but a thing taken away can be recovered ; and so if one has not turned to other business, even if one seeks one's friends and returns to recover the thing, one is said to act "incontinenti," as is noted by the gloss on ff. De vi et vi armata, l. iii, § *eum igitur*, already quoted. Understand the limitation in the passage of time in this sense.

Of equivalence in the act of violence itself. How should the act be done ?

[Ch. cxiv.]

The third question relates to limitation in the matter of equivalence in the violent act ; that is to say, it must be defensive, not vindictive. And although the subject is treated in various ways, it should be considered throughout in relation to the conditions of the persons.

Am I deemed to have acted vindictively, and not defensively, if I have expelled my despoiler from my possession, when, before I expelled him, he offered to give security for the restoration of possession ?

[Ch. cxv.]

The fourth question is this : A man has expelled me from possession, and after the expulsion he is prepared to give security for its restoration, if it should appear that he has not acted lawfully ; but none the less I expel him ; am I deemed to have acted vindictively ? The gloss on C. Vnde vi, l. i, holds that I am ; but the gloss is generally disapproved. For one ought not to trust oneself to that weak security ; ff. Ad Treb., l. *quia poterat*, and l. *nam quod*, and similar passages.

Whether I ought to await one who is prepared to strike me, or to anticipate him ?

[Ch. cxvi.]

The fifth question is whether, if I see a man prepared to strike me, I ought to wait for him to strike me, or to anticipate him. The gloss on l. i, quoted above, argues for and against, and determines that I ought not to wait for him. Petrus says that in interpreting the gloss we must distinguish between persons. For some are bold and ready to strike, and such persons are not to be waited for ; others are timid, and these are not at once to be anticipated ; and in this way he limits a clear gloss ; C. Si quis Imperatori maledixerit, l. i.

Whether a soldier attacked by his neighbour is deemed to repel force with force if he waits for him, and strikes him, although he might run away ?

[Ch. cxvii.]

The sixth question is this : A good soldier is attacked by his neighbour, and might avoid him by running away ; but thinking shame of that, he waits for him, resists him, and strikes him ; is he deemed to repel force with force ? It appears that he is not, by ff. Ad leg. Aquiliam, l. *scientiam*, § *qui cum aliter*. Modern jurists hold the contrary, on the authority of ff. Ex quibus caus. maiores, l. *in eadem*. The section *qui cum aliter* is not inconsistent, because the man could not avoid him without injury to his own repute and honour, which are things that cannot be repaired by a judge ; ff. Si quis ommissa causa testamenti, l. *Iulianus*.

If a wounded man, after the wounds have been inflicted, pursues his assailant, and strikes him, should he be punished as "malicious," or as "culpable" ?

[Ch. cxviii.]

The seventh question is this : A wounded man, after the wounds have been inflicted, pursues his assailant, and strikes him, which is not lawful ; ff. Ad leg. Aquiliam, l. *si ex plagis*, § i, and l. *qua actione*, § *si in colluctatione* ; is he to be punished as "malicious," or as "culpable" ? Some say as "culpable," because an unpremeditated heat does not involve "calumnia" ; ff. Ad S. C. Turpil., l. i, § *queri* ; ff. Ad leg. Corn. de sica., l. iv, § *cum quidam* ; ff. De pœnis, l. *respiciendum*, § *delinquent*. Others say as "malicious," since he ought not to have revenged himself. Jacobus de Arena says that the first view is more humane ; ff. De pœnis, l. *interpretatione* ; ff. De reg. iur., l. *in totum* ; and the second is stricter ; C. De iniur., l. *si non convicii*. I think the first is truer, even as a matter of law, on the authority of the laws first cited.

Whether violence to the person may be repelled by friends ?

[Ch. cxix.]

The eighth question is, whether violence to the person may be repelled by friends, like violence to things, as the gloss on § *eum igitur* notes. The gloss on C. Vnde vi, l. i, says not, on the authority of ff. De vi et de vi armata, l. *cum fundum*. Others draw a distinction. Either the friends were attendant on the person who suffered the violence, or they were not. In the first case it is lawful ; ff. De iniuriis, l. *item apud Labeonem*, § *si quis virgines*. In the second case it is not lawful. Jacobus de Arena holds that it is lawful in any case. For if others may help us in our affairs, as appears from ff. De neg. gest., l. i, much more may they help our person, which is preferred before

things ; C. De sacrosanct. ecclesiis, l. *sancimus*. The text of C. Ad legem Iuliam de adulteriis, l. *Gracchus*, seems to support this. The law *cum fundum* is not inconsistent, because there the mandate was given after an interval, which would not be lawful even for the principal. The text of l. *ut vim* is opposed to this view, when it says "for the protection of one's own person," and Clem., De homicidio, *si furiosus*.

Whether a slave is excused, who kills his master's wife on the order of his master ?

[Ch. cxx.]

The ninth question is this : Suppose a man orders a slave to kill his wife, whom he suspects of adultery, and threatens that otherwise he will kill the slave, and the slave kills her ; is he excused ? It seems that he is not. For one ought to bear all evils rather than consent to evil ; ff. Quod met. causa, l. *isti quidem*, at the end. This seems to be supported by ff. Ad leg. Aquiliam, l. *scientiam*, § *qui cum aliter*. To the contrary is ff. De iustit. et iure, l. *ut vim* ; for he did the act in defence of his own person. Therefore, &c. Jacobus of Ravenna draws a distinction. Either the woman would have perished in any case, or she would not ; ff. Ad leg. Aquil., l. *si quis fumo* ; and ff. Quod vi aut clam, l. *si alius*, § *est et alia*. Petrus holds that the slave is excused in any case, because he did it in defence of his own person ; l. *ut vim* ; also because charity begins with oneself ; C. De servitut. et aqua, l. *præses* ; also because it is lawful to redeem one's own life ; C. De transactionibus, l. *transigere*. I should think a distinction ought to be made. If the danger of his own death would inevitably befall the slave unless he killed the wife of his master, then I should think the opinion of Petrus true. If there should be some hope of his safety, even if he resisted his master, then I should be of the contrary opinion, on the authority of the laws above cited.

What is the end of particular war ?

[Ch. cxxi.]

As regards the last principal question, which is, What is the end of this war ? the solution of this question is clear from what has been said above. For the preservation of oneself and of one's property is the end of this war, and this is its final tendency, and the reason why it is allowed, as clearly appears from the arguments above.

The fifth treatise of the third principal part, treating of particular war which is waged in defence of the mystical body, and called Reprisals.

[Ch. cxxii.]

Whence and in what have Reprisals their origin, and why were they introduced ?

[Ch. cxxiii.]

As I shall deal in some detail with the question and matter of reprisals, I will first set forth the foundation upon which the introduction of reprisals rests. Having done so, I will examine causes which need examination.

Now the Most High Creator in the beginning created the heaven and the earth, and the things which are in them, and angelic and human nature, spiritual things and temporal things, and ruled them in His own person ; and to man, whom He created, He gave precepts, and on the transgressor He imposed a penalty ; Genesis, ch. ii. And how He ruled them in His own person is apparent, for He punished offences Himself, and not by a minister. For He punished Cain, Lamech, and certain other princes, as we read in Genesis, chs. iv and v. And this government of the world proceeded down to the times of Noah. But from the time of Noah He began to rule the world by ministers, of whom the first was Noah ; and that Noah was the ruler of the people is clear. For the Lord committed to him the government and administration of the Ark ; Genesis, chs. v and vi. And by the Ark is signified the Church. And we read in Genesis, ch. ix, how the Lord committed the government to Noah and to his sons ; and although Noah was not a priest, yet we read that he exercised the office of priesthood, before laws were given to the people ; Genesis, ch. viii. But in this government and vicariate succeeded Patriarchs, Kings, and Judges, who were for a time rulers over the people of the Jews. And that government lasted to the time of Christ, Who was our natural Lord and King, of Whom we read in the Psalm, " O God, give thy judgement to the king." But Christ Himself put two lights on the earth—a greater light for the day, which is the supreme Pontiff, and a lesser light for the night, which is the Emperor of the Romans, to whom He committed the administration and government of the world, to the one in spiritual matters, and to the other in temporal. In the early time, when the Lord governed in His own person, there was no need of reprisals, since justice was administered by the Lord. In the time of Noah and his successors in the government of the people of the Jews, there was no need of reprisals, since justice was administered by ministers, and subjects among the people recognized a superior whom they obeyed. In the early days of the supreme Pontiffs and the Roman Emperors, when all were in subjection both in law and in fact, there was no need of reprisals, since the complement of justice was administered by princes, with observance of the due order of law. But when the Empire began gradually to be exhausted, so that now there are some who in fact recognize no superior, and by them justice is neglected, the need arose for a subsidiary remedy, when the ordinary remedies fail, but which

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is on no account to be resorted to when they exist ; ff. De minor., l. *in causæ* ; ff. De oper. nov. nunci., l. *in provinciali*. But this extraordinary remedy had its origin in the law of nations. For it is a form of lawful war. For it is lawful to take arms in defence of one's own body ; ff. De iustit. et iure, l. *ut vim* ; C. Vnde vi, l. i ; De restitut. spoliat., ch. *olim* ; and not only in defence of one's private and individual body, but also of the mystical body. For a community is one body, whose parts are the several members of the community ; ff. Quod cuiuscunque universit., l. i ; and so a community may defend the parts of its own body. It had its origin, too, in divine law, as we read in xxiii, q. ii, ch. *Dominus Noster*. From all that has been said, we may infer the reason of the introduction of this remedy. For its final object is that justice may obtain its due effect, and its occasion is when there is a failure of remedy, arising from the neglect of those who govern and rule peoples, and the absence of recognition of superiors in fact, at which time this extraordinary remedy is needed. From this we infer that even to-day this remedy rarely claims a place. For if the secular judge neglects his office, recourse is to be had to the ecclesiastical ; De foro competenti, *ex tenore*, and ch. *licet*, and ch. *ex parte* ; Qui filii sint legitimi, *per venerabilem* ; although he also is in fact ill obeyed. After this preface, it remains to examine what are the causes of reprisals, as follows.

Of the causes of reprisals.

[Ch. cxxiv.]

What is the efficient cause ? the formal cause ? the final cause ? We must also consider certain questions arising on this subject.

Of the efficient, or productive, cause of reprisals.

The first question, What is the productive cause ? is the same thing as asking who may declare reprisals. Here we must observe that, as was said above, no positive law, canon or civil, ordains that reprisals should be declared. For both laws ordain a mode of obtaining the effects of justice. It is even forbidden to seize one's own property ; C. Vnde vi, l. *si quis in tantam* ; and ff. Quod met. causa, l. *exstat*. Moreover, they are even expressly forbidden by civil and canon law ; Authent., Vt pign. non fiant ; and Sext, De iniur., the single chapter. But when the remedies of positive law fail, it has been necessary to resort to this device of a declaration of war, lest justice should perish. But this declaration of war belongs only to one who has no superior ; ff. De captivis, l. *hostes*. For one who has a superior cannot violate the remedies of law on his own authority. Therefore only one who has no superior, both in law and in fact, may declare reprisals. Also he against whom they are declared should

have no superior, or, if he has, that superior should neglect to do *ustice*. From which some people infer that the magistrate of a state which recognizes no superior in fact, cannot declare reprisals unless he is specially empowered to do so, but that recourse should be had to the community, with whom the full sovereignty resides, and they should be declared on its authority. I do not think this is true where a community has transferred all power to a ruler; for then he can do anything that the community can do, as we say where the ruler has general and unlimited power; ff. *De procuratoribus*, l. *procurator qui*. Otherwise, if the power transferred is limited. They also argue that if a count, margrave, or the like is subject to the Emperor, reprisals cannot be declared without the Emperor's authority, arguing from the rule mentioned above in *De restit. spoliatorum*, ch. *olim*. And this holds if we speak of common law. For if we speak according to the disposition of municipal laws, according to which the right of declaring reprisals is allowed, we must say that those persons may declare them to whom a municipal law grants the right. And they are granted, as I said, on the ground of urgent necessity, just as sometimes the civil law, on the ground of necessity, grants a man the right to take the law into his own hands; ff. *Quæ in fraudem cred.*, l. *ait prætor*, § *si debitorem*; ff. *Quod vi aut clam*, l. *alius*, § *bellissime*. From what has been said, we may infer by what law a declaration of reprisals is obtained. For as "conditions" are granted by force of a statute, so this privilege is obtained from a law; ff. *De conduct. ex lege*, the single law. But if we refer to the disposition of the common law, some say that neither the action nor the office is intended. Their reason is, that this power is granted only by the law of nations, and that by that law all things were directed by the power of a king; ff. *De orig. iuris*, l. ii, at the beginning. So they say that to-day the hand of a king is required, according to the divine statutes and by the law of nations. I do not think this is true. I admit that there is no power unless the traditional form is observed. For recourse must first be had to the ordinary remedies, and only if they fail, to this remedy; and this should be ascertained by a judge who is asked to declare reprisals; and if the person against whom they are claimed appears after notice given, he is heard for the defence, as will be shown below, and judgement follows, either awarding or refusing the declaration. Fourthly, the action or the office was necessary, for the form of the judgement ought to follow the mode of petition; ff. *Communi divid.*, l. *ut fundum*; and *De simonia*, ch. *licet Heli*. This is confirmed. For although this power proceeded from the law of nations, yet it has been approved by the civil law, by implication, though not by express words. For the civil law implies, or rather it expressly declares, that rebels and those who disobey the law may be proceeded against by military force; ff. *De rei vindicatione*, l. *qui restituere*. And so it has provided a remedy by way of request to a magistrate to allow recourse to be had to this military force, when the appropriate remedies fail.

Of the material cause of reprisals.

[Ch. cxxv.]

It remains to examine the material cause. As to the material cause, then, we must consider the "matter in which," the "matter about which," the "matter against which," or the object, and the "matter from which."

What is the "matter in which"?

The "matter in which" is the person or subject to whom this power is granted.

What is the "matter about which"?

The "matter about which" is the things about which this power is granted.

What is the "matter against which"?

The "matter against which," or the object, is that against which it is granted, as, for instance, a state, or other community.

What is the "matter from which"?

The "matter from which" is the cause from which the power is granted.

Returning to the examination, I ask to whom this power of taking reprisals is granted. Solution: It is granted to citizens for the reason given above. For citizens are a part of the mystical body, that is, of the state; ff. *Quod cuiusunque universitatis*, l. i. Hence the state is called "*civitas*," as being a unity of "*cives*," as is noted in Sext, *De sent. excom.*, ch. *si civitas*. And, as was shown above, any man is allowed to defend his own body; ff. *De iustit. et iure*, l. *ut vim*; and C. *Vnde vi*, l. i. And this is true alike of the mystical and of the individual body. As to this questions arise.

Are reprisals to be granted to residents?

And the first question is, whether they ought to be granted to residents. Some authorities draw a distinction here, and say that if the residents bear the burdens of the state, then reprisals ought to be granted to them; if they do not, then they ought not to be granted. The reason of the second statement is, that one who does not share a burden ought not to share a benefit either; C. *De furtis*, l. *manifestissimi*, § *sed cum in secundam*; ff. *De regul. iuris*, rule *secundum naturam*; and Sext, rule *qui sentit*. It is supported by C. [De episc.

et clericis] De collegiatis, book xi, l. *qui sub prætextu*; and ff. [C.] De collegiis [book xii, l. i], *collegia si quæ fuerint illicita*. It is further supported by the rule that a man does not enjoy the privileges of an office, unless he has in fact held it; C. book xii, De consulibus, l. *nemini*; [C.] ff. De excusat. [tut.], l. *sed et milites*, § *quæsitum*; ff. De testam. mil., the penultimate law. I do not think this opinion true without qualification, but I think a distinction must be made as follows. Either a resident bears no burdens by reason of his contumacy, because, although called upon, he will not bear them, as he is bound to do. For between a state which admits a man to reside and the resident, there arises an implied contract, binding on both sides, whereby the resident is bound to bear burdens; ff. Ad municip., l. i, and l. *incola*; and the state is bound to protect him; ff. De offic. præsidis, l. *illicitas*, § *ne potentiores*. And in this case, if he refuses to fulfil the contract on his side, the state, for its part, is not bound to defend him, nor can he demand that it should; ff. De act. empti, l. *Iulianus*, § *offerri*. Or, again, the resident bears no burdens because the state, which was able to remit the burden, has conferred this privilege on him; C. De pactis, l. *si quis in conscribendo*; and De episcop. et cleric., *vel a Principe*. And then reprisals ought to be granted to the resident, for privileges granted in his favour should not result in injury to him; C. De legibus, l. *quod favore*; Sext, rule *quod ob gratiam*. And you must understand this to refer to a privileged person after the assumption of his privileges.

Whether reprisals should be declared for citizens who are not subject to the jurisdiction of a state, and are otherwise not part of it?

[Ch. cxxvi.]

The second question is, whether reprisals should be declared for citizens who are not subject to the jurisdiction of a state, and are otherwise not part of it. Some authorities draw a distinction. If they are excepted from the jurisdiction by privilege, like clerks; Authent., l. ii; C. De episcop. et cleric., *statuimus*; or because of secular rank; C. Vbi senat. vel clarissimi, l. ii; ff. De vacat. mun., throughout; reprisals should be granted them. If they are not subject by reason of their own contumacy, then reprisals should not be granted. The reason of the first statement is, that a privilege introduced in their favour should not result in injury to them, and because among citizens an obligation is formed at birth between the citizen and the state, which cannot be changed; ff. Ad municip., l. *assumptio*. Otherwise with a mere resident, because in his case an obligation is formed only by his admission; ff. Ad municipalem, l. i. The reason of the second statement is their own contumacy; ff. Ex quibus cau. maior., l. *sed etsi per prætorem*, § *sed si dum*.

Whether reprisals should be granted to a citizen "by convention" against the state of his origin?

[Ch. cxxvii.]

The third question is, whether reprisals should be granted to a citizen "by convention" against the state of his origin. It appears that they should not; for where I claim a right from some fact, I am not under a liability if I acquire the right; ff. De usufruct. legato, l. *sed et si quis*, § *et regulariter*. But if an injury is done to this citizen, the state of his origin acquires a right of declaring reprisals; therefore reprisals cannot be declared against it. This view is confirmed by the rule that the state of origin is preferred; ff. Ad municipalem, l. *assumptio*. Also by the consideration that the state of origin might have legislated for its own subject, before he became a citizen of the other state by convention, and his state by convention cannot complain. It is confirmed by the analogy of the usufructuary, who may make an "operis novi nuntiatio" to all except the owner; ff. De oper. nov. nuntiatione, l. i, at the end. It is confirmed by a further analogy. For one who has the Publician action may use it against all except the owner; ff. De Publiciana, the last law. The text of ff. Ad municipalem, l. *de iure*, supports this. For the relations between a citizen and a state should be put in suit only before a judge of that state. This is confirmed. For reprisals are an extraordinary remedy, as I showed above; but extraordinary remedies are not given to a son against a father; C. Qui et advers. quos, the last law. But the power of a state over a citizen is greater than that of a father over a son; ff. De iustit. et iure, l. ii; and ff. De captivis, l. *postliminium*, § *filius*; ff. De castrensi peculio.

The contrary view is supported by the consideration that if two have the same subject, each may defend him against injury inflicted by the other. For a state punishes a father who offends against his son; ff. De patri., throughout. This is confirmed thus: For if two have rights over a thing, although one right may be weaker than the other, yet the man who has the weaker right may bring an action against the man who has the stronger, if he injures the thing in which those two rights meet; ff. Ad leg. Aquil., l. *item Mela*, the last section; and the same title, l. *si dominus servum*. It is confirmed thus: For if two men are owners of the same slave, and one does him a wrong, he may be restrained by the other; ff. Ad leg. Aquil., l. i. It is confirmed thus: For, to repel an injury, friends may be summoned; ff. De vi et de vi armat., l. iii, § *eum igitur*; and De homicid., *significasti*; Sext, De sent. excom., *dilecto*. Solution: Some authorities say without qualification that reprisals may be declared, their reason being that the power of declaring reprisals takes the place of defective jurisdiction. But if a state injures a citizen, he may appeal to a superior; ff. Quod met. causa, l. *metum*, § *animadvertendum*. Therefore, when jurisdiction fails, there is a place for reprisals. This is supported by ff. De dolo, l. *sed si ex dolo*. It is confirmed thus: For any power is deemed to be legitimate, when it is rightly used, but not when it is used for spoliation; ff. Pro emptore, l.

ei qui fundum, § si tutor ; ff. De furt., l. *interdum, § qui tutelam* ; and so they say the citations on one side and on the other hold. I do not think this conclusion is true in this unqualified form ; but I think we must distinguish between cases where the injury inflicted by the state of origin arises from some act prior to the convention, whereby the man became a citizen of the other state, and cases where it arises from something done afterwards. In the first case, reprisals may not be granted by the state of convention. For the man ought to be a part of the body to be defended, at the time when he suffers the injustice. For this right does not pass to the new state ; ff. De servo corrupto, l. *doli*, the last section ; ff. Depositum, l. i, § *si servus* ; and ff. De oblig. et actionibus, l. *quæcunque*. From which I infer that reprisals ought not to be granted to one who becomes a citizen by convention after the injustice is committed. In the second case, the solution above given holds.

Whether reprisals should be granted to citizens, and to those who are regarded as citizens, but whose citizenship is limited ?

[Ch. cxxviii.]

The fourth question concerns citizens and those who are regarded as citizens, but whose citizenship is limited. As to the power of a state to determine who is a citizen, see C. De incolis, l. *cives*. Even mercenaries are included, when they earn pay ; ff. Ad municipalem, l. *municipes*, the last section. Also students, to the extent that they receive protection from the rulers of states ; ff. De pecunia constituta, l. i ; and Authent., *habita*, C. Ne fil. pro patre. Are reprisals to be granted to such persons ? Some say that limited reprisals should be granted on their behalf, and in those matters in which they are regarded as citizens, as where an injury is done to a student in matters regarding his studies, and to a soldier in matters regarding his service ; but not in other matters, since in other matters they are not regarded as members of the body.

Whether a state may grant reprisals to the citizens of another state, who by agreement or statute are treated as its own citizens ?

[Ch. cxxix.]

The fifth question is whether, if by agreement or statute the citizens of one state ought to be treated as citizens of another, reprisals should be granted to them by the state in which they ought to be so treated. Solution : The words of the agreement and statute are to be weighed. For those words say they are to be treated as citizens ; they do not make them citizens ; ff. De verb. significat., l. . . . *appellatione* ; and the note there by Jacobus de Arena should be observed. Those words, then, are understood as meaning that they are treated as citizens in matters belonging to the common law ; ff. Pro emptore,

l. ei qui fundum, § si tutor. This is one solution. I do not accept this conclusion, and I even believe that reprisals should be declared for them. For I admit that those words do not make a man a citizen, but they give him a right to all that the citizen has a right to. For this is proved by the words, which ought not to be departed from, nor deprived of their proper meaning ; ff. *Qui et a quibus, l. prospexit* ; ff. *De leg., iii, l. non aliter* ; and ff. *De exercitoria, l. i, § is qui navem*. Hence, there should be granted to him all that is granted to a citizen ; but reprisals are granted to a citizen, as I showed above. Therefore, &c. Nor is this inconsistent with saying that there should be granted to him all that belongs to a man by the common law ; for this remedy, if the due formalities are observed, is not forbidden by the common law.

Of the "matter about which."

[Ch. cxxx.]

It remains to consider the "matter about which" they are granted, which is property ; and this is clear. For they affect the property, movable and immovable, of those against whom they are granted, which is found in the territory of the state which grants them. But in regard to this many questions may be raised.

Whether reprisals can be declared against the property of those whose persons cannot be seized on the strength of reprisals ?

And firstly, can reprisals be declared against the property of those whose persons cannot be seized on the strength of reprisals ? Solution : If they are persons who cannot be seized on account of some difficulty caused by reason of age, or madness, or the like, then reprisals can be executed against their property ; ff. *De in ius vocando, l. satisque* ; Authent., *Vt nulli iudicium, § necessarium*. But if they cannot be executed against the persons because of some privilege allowed them by law, as in the case of students and ambassadors, then the reprisals cannot be executed on the property necessary for their studies or embassy, which they bring with them, but on their other property they may ; ff. *De publican., l. si publicanus*. This also affords a solution of a third question : If an ambassador or a student brings with him property belonging to others, can reprisals be executed against this ? We must say that they cannot, if the things are necessary to them, as horses and the like ; ff. *De verb. significatione, l. censoria* ; otherwise they can.

Whether a simple declaration of reprisals may be executed against property existing in the territory of the state against which the reprisals are declared, so that it may be seized and brought into the territory of the state declaring them?

[Ch. cxxxi.]

The second question is, whether a simple declaration of reprisals may be executed against property existing in the territory of the state against which the reprisals are declared, so that it may be seized and brought into the territory of the state declaring them. Some say it may not, because the property is "outside the territory"; ff. De iurisdictione [omn. iud.], l. *extra territorium*; and ff. De rebus auctor. iudic. possidend., l. *cum unus*, § *is cuius*; and Sext, De constit., ch. ii. Moreover, to enter the territory of others is allowed to be a cause of greater disturbance. Therefore, as the point is doubtful, it does not seem to be allowed; ff. De reg. iuris, l. *non est singulis*. I cannot accept this conclusion; for resort is had to the royal authority on account of a failure of jurisdiction, because the formula of a solemn judgement has failed; and accordingly this may be done anywhere, because a man may anywhere defend his own body; ff. De iustit. et iure, l. *ut vim*; and C. Vnde vi, l. i. Also, in a simple and general grant the words ought to operate generally according to their tenor; ff. De leg. præstan., l. i, § *generaliter*; also the result might be that reprisals would have no effect, as when they are used against a distant state, whose citizens have no property in, and do not come to, the state declaring them. Hence the declaration must be understood in a sense in which it may have its effect in any event; ff. De legat., i, l. *si quando*; ff. De reb. dub., l. *quotiens*; De reg. iur., l. *quotiens*.

Whether, if one state declares reprisals against another, the ruler of the state declaring them, after writing to the ruler of the other, may execute the reprisals against property situated there?

[Ch. cxxxii.]

The third question is whether, if one state declares reprisals against another, the ruler of the state declaring them may, after writing to the ruler of the other state, execute the reprisals against property there situated. Some authorities say that, although this may be done in execution of a judgement; see ff. De re iudicata, l. *a divo Pio*, § i; and De rebus auct. iudic. poss., l. *cum unus*, § i; yet in this case it may not. And their reason is this: For a declaration of reprisals is a form of particular war, to which no one can compel another unless he is a subject: Vsus Feudorum, Hic finitur lex Conradi, ch. *domino*. I do not believe that this is the correct meaning. For it supposes that in the execution of a judgement the judge who gives the judgement can compel another judge, even one who is not a subject, to execute it, which is false, because equal has no power over equal; ff. De arbi., l. *nam magistratus*; ff.

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Ad S. C. Trebellianum, l. *ille a quo*, § *tempestivum*; De elect., ch. *innotuit*. None the less, the other does wrong if he does not execute it, so that he may be proceeded against before his superior on that account; for as long as justice can obtain its effect by observing due process of law, the rules of law should not be broken. Hence, in neither case is there a question of compulsion, but in each case the other will act rightly if he executes the judgement: because, just as when there is no failure of jurisdiction he ought to execute a judgement on request, so, when there is a failure of jurisdiction, and reprisals are resorted to, he ought to assist, though he cannot be compelled. But in federated states, as to which see ff. De captivis, l. *non dubito*, this is clearly admitted.

Of the "matter against which."

[Ch. cxxxiii.]

It remains to consider the "matter against which" reprisals may be executed, which is properly called the subject, as to which many questions arise.

Whether reprisals, declared by one state against the men of another, may be executed against residents of that state?

And the first question is whether, if the state of Milan has declared reprisals against the Bolognese, or the men of Bologna, the reprisals may be executed against residents in the state of Bologna. Solution: The words "Bolognese" and "men of Bologna" have the same meaning; ff. De excus. tut., l. *sed reprobari*, § *amplius*, and the gloss there. But the word "Bolognese" means the burgesses; ff. Ad municipalem, l. i; and the word "burgess" is the genus of "citizen" and "resident," as is noted in C. De incolis, l. *cives*. This is supported by the text of ff. Ad municipalem, l. *fili*, § *municeps*. Therefore, arguing from the first to the last, it follows from the nature of the words, that reprisals may be executed against the residents. And this is true, when residents bear the burdens of the state; Ad municipalem, l. i. Otherwise, if they do not.

The same subject continued; whether, if one state has declared reprisals against the men of another state, they can be executed against men of that state living elsewhere?

[Ch. cxxxiv.]

The second question, which continues the same subject, is whether, if, for instance, the state of Milan has declared reprisals against the men of Bologna or against the Bolognese, they can be executed against Bolognese living elsewhere. Some authorities say they can, because the place of origin

is not changed ; ff. Ad municipalem, l. *assumptio*. Others make a distinction according to whether the reprisals are declared against the men of a province ; and then, they say, they cannot be executed against those who live elsewhere, because they are not considered to belong to the province ; ff. De verbor. signific., l. *provinciales* ; or against the men of a single state ; and then the first view prevails. A third party make a distinction according to whether the persons are living elsewhere, but within the same province ; and then, they say, the reprisals may be executed against them ; or in another province ; and then they may not. They rely on the reasons noted in the gloss on C. De adoptionibus, l. *in adoptionem*. A fourth party say that according to the proper meaning of the word, those who live elsewhere are regarded as Bolognese ; but according to the common use of speaking, they are not, and the common use prevails ; ff. De legat., iii, l. *librorum*, § *quod tamen Cassius* ; and so reprisals cannot be executed against them. Others say they can be executed against Bolognese who live elsewhere, but who are subject to the burdens of Bologna. But if they are not subject, then otherwise ; ff. Ad municipalem, l. i ; ff. De excusat. tut., l. *si duas*, § *sed et reprobari*, § *amplius* ; and C. De agric. et censitis, l. *cum scimus*, at the end.

Whether reprisals can be executed against the citizens or residents of a state, who are subject to its burdens, but are also citizens of another state ?

[Ch. cxxxv.]

The third question is, whether reprisals can be executed against citizens or residents of Bologna, who are subject to the burdens of Bologna, but who are also citizens of Milan. It seems that they can be executed against them. For if a state can declare reprisals against one who is not its subject, much more may it declare them against a subject. This is confirmed. For an owner may claim that a usufructuary should forfeit his right of use on account of his misconduct, and conversely ; ff. De damno infecto, l. *si proprietarius*, and l. *hoc amplius*, § *si cum*, and the following section. Similarly then here, where two states claim jurisdiction over the same citizen. Some hold the contrary opinion without qualification. Their reason is, that this right takes the place of defective jurisdiction. But a state can well exercise jurisdiction over its own citizen ; therefore he will not be subjected to reprisals ; ff. Si quis test. lib. esse iussus, l. i, § *utique*^(?). Moreover, a state is bound to defend its own citizen ; therefore reprisals, if declared, will not constrain him ; ff. De evictionibus, l. *vindicantem*. Moreover, if a Milanese were to be constrained, then the state making the grant of reprisals would appear to be acting against itself, contrary to ff. De iur. fisci, l. *in fraudem*, § *neque*. This conclusion I cannot accept without qualification. Nay, if a state cannot in fact constrain its own citizen, who is also a citizen of the state against which reprisals are declared, they will most properly be executed against him ; for they are declared because of a failure of jurisdiction, as has often been said above. But as a matter of law,

jurisdiction ought not to fail, since in law all are subject to the emperor ; ff. Ad leg. Rhod. de iact., l. *deprecatio* ; ix, q. iii, ch. *cuncta per mundum*, and ch. *per principalem*. But in fact it fails, because in fact men do not recognize him. Therefore, just as in fact jurisdiction may fail when a non-subject does a wrong, so, too, one who in law is a subject may resist in fact, and so resort may be had to the extraordinary remedy. I admit, however, that they will not constrain a subject until he has been specially proceeded against by due process of law, and the process is ineffective because of his actual rebellion.

Whether reprisals can be executed against [soldiers] women ?

[Ch. cxxxvi.]

The fourth question is, whether they can be executed against the [soldiers] women of Bologna ? It appears that they can, for the doctrine of postliminium applies to them ; C. De [captivis] postliminio reversis, l. i. The contrary is true, for they cannot be seized in person ; C. De offic. eius qui vicem alic. iud. obtinet, Authent., *sed hodie* ; and C. De execut. rei iudicatæ, Authent., *sed novo iure*. And that power, allowed by the law of nations, ought to be understood according to the civil law ; ff. De servit., l. *si cui*.

Whether reprisals can be executed against clerks and others, even married clerks ?

[Ch. cxxxvii.]

The fifth question is, whether they can be executed against Bolognese clerks ? The text says not, in Sext, De iniur., the single chapter. What about married clerks ? As to them we must follow Sext, De iniur., the single chapter.

Whether, when a bishop neglects to do justice on his clerks, and recourse cannot be had to his superior, because the bishop is schismatic, reprisals can be declared against the same clerks by a secular judge ?

The sixth question is whether, if a bishop neglects to do justice on his clerks, and recourse cannot be had to his superior, because the bishop is schismatic, reprisals can be declared against the clerks by a secular judge. Some authorities are doubtful on this point. We need have no doubt, because the laity have been granted no power over a clerk, however delinquent ; De sent. excom., ch. *contingit*, and ch. *in audientia* ; and Sext, the same title, ch. *si iudex laicus*. They may therefore be coerced by their superior, and recourse may be had to a secular judge by way of invocation ; De offic. iud. ord., ch. i ; xxiii, q. v, *regum*, and ch. *administratores*, and ch. *principes*.

Whether reprisals can be executed against Bolognese students, or other students of Bologna, on their way to Padua for study ?

[Ch. cxxxviii.]

The seventh question is, whether they may be executed against Bolognese going to Padua for study, or even against students of Bologna. The text says not, in Authent., Ne fil. pro patre, ch. *habita*; and this applies if they study law in privileged places, by the privilege of the university, but not if they study law in other places; ff. In proœmio, § *hæc autem tria*. But in other faculties the instruction may be given anywhere; ff. De excusationibus, l. *si duas*, § *cum autem*. And what has been said of students, applies also to writers, and bedels, and others who go for the sake of the students. This is proved by ff. De milit. testam. militis, l. i; and De bon. poss. ex testam. militis, the single law. It also applies to a father and other relatives going to see a son and relative in the university; ff. De iudiciis, l. ii, § *item*, in the gloss on the word "venerit."

Whether reprisals can be declared against ambassadors ?

[Ch. cxxxix.]

The eighth question is, whether they may be executed against Bolognese ambassadors. Solution: They may not; De legation., the last law; ff. De iudic., l. ii, § *legatis*; and note C. De iurisd. omn. iud. et de foro competentis, the last chapter.

Whether reprisals can be executed against those who are going to a festival, to the Church of St. James, or to other place of indulgence; also whether they can be executed against those at sea, and against those who cannot be summoned into court, and in many other cases ?

[Ch. cxl.]

The ninth question is, whether they may be executed against Bolognese on their way to a festival. The text in C. De nundinis, the single law, says not. Can they be executed against Bolognese on their way to St. James' or on another pilgrimage? I answer, no; De cleri. pereгри., throughout; xxiii, q. iii, *si quis Romipetas*; C. Communia de success., Authent., *omnes*; there fully. The rule is the same for those going to a place of indulgence, because of the hospitality and the like which should be shown to persons going for an indulgence. Can they be executed against persons sailing to Bologna, who are carried by the wind to the state declaring them? I answer, no; Authent., *navigia*, C. De furtis. To the same effect, C. book xi, De naufragiis, l. i. Or can they be executed against those who cannot be summoned into court, who are enumerated in ff. De in ius vocando, l. ii? I answer, no. The reason is, that if they should be condemned, they could not be seized; much less could

this be done for the wrong or debt of another. From which it follows that if a Bolognese were appointed to an office at Milan, he could not be detained there on the strength of reprisals. So, too, if a Bolognese were to go to the city of Milan for the funeral of a relative. So, too, in similar cases which are enumerated in ff. De in ius vocando, l. ii, already quoted.

*Whether reprisals can be granted against a Bolognese magistrate of Milan,
who does injustice there ?*

[Ch. cxli.]

The tenth question is, whether reprisals may be granted against a Bolognese magistrate of Milan, who does injustice there. Jacobus de Belvisio, on Authent., Vt non fiant pignor., holds that they may, on the authority of ff. Quod quisque iuris, l. i. Others draw a distinction. The injustice done may be one for which he cannot be sued during his office, or he may be a magistrate who cannot be sued ; ff. De iudic., l. *pars literarum* ; ff. De iniuriis, l. *nec magistratus* ; and then they cannot be declared. But when his office is finished, they can be declared, if leave has first been asked of the syndic ; nor ought resort to be had to a judge of his own state, because he ought not to be sued there for an act of this kind ; C. Vbi de ratiociniis agi oportet, l. i, and l. ii ; and C. Vt omnes tam civil. quam militares, l. i ; and in Authent., Vt iudi. sine quoque suff., § *necessitatem*. But if he is a person who can be sued, then reprisals may be declared. I do not accept the second part of this solution, for reprisals are declared to supply a failure of jurisdiction. If, therefore, he can be sued during his office, and in the place of the offence ; C. Vbi de ratiociniis, l. ii ; and Vt omnes tam civil. quam militares, l. i ; why are reprisals necessary ? Nor do I accept the first part, where it says that reprisals may be declared when the office is finished ; for when the office is finished, he may be sued, and the form of law observed. Hence this remedy is not necessary. I admit, however, that in either case, where there is no legal means of coercing him, recourse might be had to reprisals ; and then it would not be necessary to resort to a judge of his own city, because such a judge has no jurisdiction in the case by the laws above cited.

*Whether reprisals can be declared against the officials of a magistrate or
ruler who does injustice ?*

[Ch. cxlii.]

The eleventh question is, whether reprisals may be declared against the officials of a magistrate or ruler who does injustice. Jacobus de Belvisio holds that they may. Others say that this is true where the officials have expressly taken an oath to the ruler to commit the act of injustice ; C. De advoc. diver. iud., l. *per hanc* ; C. book x, De excus. milit., the penultimate law (?). But if

the officials have expressly opposed it, reprisals cannot be declared against them ; De appellationibus, l. *quoniam*. But if they neither consent nor oppose, because of absence or ignorance, then, too, reprisals cannot be declared ; ff. De magistr. conveniendis, l. i, at the beginning. But if they are present, and neither consent nor oppose, then, if they are officials appointed to a mere office, who are not called to the counsels of the ruler—such as notaries, and associates, and accountants—then, too, reprisals may not be declared against them ; ff. De magistr. conveniendis, l. i. And the reason is because they cannot oppose ; C. Vt omnes tam civil. quam militares, l. i, § *officium*. But if they are officials admitted to counsel, reprisals may be declared against them.

Whether reprisals can be declared against the consuls and the leaders of a state, who refuse to do justice ?

[Ch. cxliii.]

The twelfth question is, whether they can be declared against the leaders and consuls of a state, who refuse to do justice. Jacobus de Belvisio says that they may. Others say that this is true only when such persons are present, but not if they are absent, because reprisals cannot be declared against them in their capacity of consuls ; ff. De magistr. conveniendis, l. i, at the beginning.

Whether reprisals can be declared against private persons, who are absolutely innocent, because of an offence of their lord, or of another private person, for which justice is not done ?

[Ch. cxliv.]

The thirteenth question is, whether they can be declared against private persons, who are absolutely innocent, because of an offence of their lord, or of another private person, for which justice is not done. Jacobus de Belvisio says not, because a man ought not to be punished for another's offence ; Sext, De reg. iuris, rule *non debet*. Others take the opposite view, on the authority of xxiii, q. ii, ch. *dominus*. For individuals, even though innocent, are punished by a sentence of interdict ; Sext, De sent. excom., ch. *si sententia*. Also, in a lawful war innocent persons are made prisoners, but reprisals are a kind of particular war ; also, although a prisoner may be innocent, yet the state has jurisdiction over him ; and this seems to be the rule.

Whether reprisals can be declared against persons who are partially, but not fully, subject to a state ?

[Ch. cxlv.]

The fourteenth question is, whether reprisals can be declared against persons partially, but not fully, subject to the state of Bologna. Solution :

If the states or communities are merely dependent on the state of Bologna, but have certain exceptions or jurisdictions by agreement, reprisals cannot be declared against them, because states which are free, and have merely submitted themselves in certain respects, are not subject. And reprisals will not be declared against them because of the offence of the lord who has them in subjection, because they are free ; ff. De captivis, l. *non dubito* ; but reprisals can be declared for an offence by these states, just as war, too, may lawfully be made against them.

Whether reprisals can be declared against a certain class of persons, who refuse to do justice ?

[Ch. cxlvi.]

The fifteenth question is, whether reprisals can be declared against a certain class of persons, who refuse to do justice. And we must say that they can, if the due form is observed.

Of the "matter from which."

[Ch. cxlvii.]

It remains to consider the material cause from which reprisals arise. And it is a failure of jurisdiction. For in the first instance a judge ought to be applied to ; and if he neglects to deal with the matter, and recourse cannot be had to a superior, then reprisals may be granted. But as to this many questions may be asked.

Whether a judge ought to be required to do justice, before reprisals are granted ?

[Ch. cxlviii.]

And the first question is, Who ought to require a judge to do justice ? Solution : The party who has suffered the injury ; and if the judge neglects to give redress, he ought to apply to the ruler of his own state, and make oath of his requisition and the judge's neglect, and ask the ruler again to require the judge to do justice ; and then, if he neglects, reprisals may be declared. But that a requisition from the party is required, appears in Authent., coll. iii, Vt differ. iudices, at the beginning.

Whether, when a man who has suffered an injury dares not litigate in the state of the person inflicting the injury, his own judge may write, asking to have the jurisdiction transferred to others, or arbitrators chosen ?

[Ch. cxlix.]

The second question is whether, if a party should hesitate to litigate in the state of the person inflicting the injury, because of that person's influence,

his own judge may write, asking to have the jurisdiction transferred to others, or arbitrators chosen by the civil law applying to certain persons in misfortune. It is clear that he may ; C. Quando Imperator inter pup. vel viduas, l. i, at the end. By canon law to-day a wider permission is given by Sext, De rescriptis, ch. *statutum*, § *cum vero*, as regards the article of request.

What judge ought to be required to do justice ?

[Ch. cl.]

The third question is, What judge ought to be required to do justice ? Solution : In the first place, a judge of the state of the wrong-doer ought to be required ; and then, if he neglects to do justice, the injured party will apply to the next superior ; and if he fails, he will apply to the prince ; in Authent., Vt differ. iudic., at the beginning. If all these fail, reprisals will be declared by his own state, which succeeds to the place of the jurisdiction which has failed. But if the judge does not neglect to do justice, but does injustice by pronouncing an unjust judgement, then, if the state has a judge of appeal appointed over him, he will be applied to by way of appeal ; and if it has not, reprisals will be declared. For some blame must be imputed to a state which has not appointed a judge of appeal. But if two judges of appeals do injustice, then it seems that the party is without any remedy, since no third appeal is allowed ; nor does it appear that reprisals may be declared, since there has been no failure of jurisdiction. But it may be said that if they pronounced unjust judgements from favour to the other party, then "*restitutio in integrum*" may be claimed ; ff. De minoribus, l. *præfetti prætorio*. But if the reason was favour to the rulers, then they would be liable to the party for the loss caused him ; C. Ne liceat potent., l. i ; and De his qui potent., l. i ; and accordingly they are liable for the loss in an "*actio in factum*" ; ff. Pro socio, l. *nec quidquam*. But if the unjust judgement arose from the judge's sole motion, then the party is without any remedy, as I showed above.

What degree of injustice is required before reprisals will be granted ?

[Ch. cli.]

The fourth question is, What degree of injustice is required before reprisals will be declared ? Solution : They are not declared for a slight cause, since this is an extraordinary remedy, which is not given for slight cause ; ff. De in integr. restit., l. *scio* ; and ff. De dolo, l. *si oleum*. Also, a complete failure of justice is required. Otherwise, if the failure is partial only ; C. De preci. Imperat. offerendis, l. *quotiens*. For reprisals do not completely do justice ; C. De servis fugit., l. *mancipia* ; and ff. De damn. infecto, l. iv, § *in eum*.

When is it to be said that resort to a superior is impossible, so that an occasion arises for reprisals ?

[Ch. clii.]

The fifth question is, When is it to be said that resort to a superior is impossible, so that an occasion arises for a declaration of reprisals ? Solution : When it is impossible both in law and in fact, then reprisals are necessary ; xxiii, q. ii, ch. *dominus* ; and C. De Iudæis, l. *nullus*. But if it is possible in law, but not in fact, because they do not obey, then the answer is the same. But if it is possible in fact, but not in law—as, for instance, because a tyrant has seized the government—then follow the note of Innocent on De electione, ch. *nihil*. But if it is possible in law, but difficult in fact—for instance, when the Emperor is far away, and the party is very poor—then, too, occasion arises for reprisals ; ff. De pig. act., l. *si servos* ; ff. De divers. [et] temp. præscriptionibus.

Of the formal cause.

[Ch. cliii.]

It remains to consider the formal cause ; and this is twofold : for there is the form of declaring, and the form of executing, the reprisals. But the form of declaring them involves the form of defence of the party against whom they are declared ; and on this, too, many questions arise.

By what law reprisals are granted ?

And the first question is, by what law they are granted. Here some say that they are granted by those who do not recognize a superior. They should not be claimed from such persons by right of action, nor through an office ; but the royal power, whereby all things were disposed, should be invoked ; ff. De orig. iuris, l. ii. For all that is required is that which the law of nations required, namely, that the cause for which they are granted should be true, without prejudice, however, to the defences of the person against whom they are granted, since this belongs to natural law ; Clem., De re iudicata, *pastoralis*, § *ceterum* ; and it is enough for one who has obtained reprisals to show the grant, without other process of law. And there is a presumption that everything has been duly done, for it is like sacrilege to dispute a judgement of the prince ; C. De crimine sacrilegii, l. *disputare*. And this is true in the territory of the authority granting the reprisals, though the nation against whom they are granted might retaliate ; ff. Quod quisque iuris. And finally, any agreement on the subject ought to be recognized ; for example, to submit to an arbitrator or other person ; and the burden of proving that all things required by the law of nations have been duly observed would rest upon the person to whom

the reprisals are granted. Hence it is safer to have a legal process, and to reduce it to writing. This is the view of the Archdeacon in Sext, *De iniuriis*, the single chapter. For he holds that monition and sentence after the refusal ought to precede ; and Guido, Bishop of Concordia, agrees. But if reprisals are claimed by persons to whom the right has been granted by statutes, then, if the statute prescribes an order, that order ought to be observed. But if it prescribes no order, then, inasmuch as the power of granting reprisals proceeds from civil law, since statutes are civil law ; ff. *De iustit. et iure*, l. *omnes populi* ; then the office of an official ought to be invoked, a statement of claim delivered, the party cited, and proceedings taken as the laws ordain.

Who may appear to oppose the declaration of reprisals ?

[Ch. cliv.]

The second question is, Who may appear to oppose the declaration ? Solution : Any one who has an interest ; *De testib.*, ch. *veniens* ; *De re iudi.*, ch. *cum super*. But the people against whom they are declared have an interest, so that any person instructed on their behalf should be heard ; and any member of the people should be heard, even without instructions, because all have an interest ; ff. *De novi oper. nunt.*, l. *in provinciali*, the last section. Also members of the people of the state declaring reprisals should be heard, because they are interested in preventing an unjust declaration, for fear of retaliation ; ff. *Quod quisque iuris*, in the red, and the black throughout.

What defences are allowed to one against whom they are declared ?

[Ch. clv.]

The third question is, What defences are allowed to one against whom reprisals are claimed ? Solution : He may plead as an "exceptio," that the claimant has not the right to claim, either by reason of some personal incapacity, or of incompetency of the jurisdiction, or because he is ready to make amends ; xxiii, q. ii, ch. *Dominus Noster*. Can this right be renounced by agreement ? For example, suppose a ruler of the state of Bologna is elected, who swears not to claim reprisals against a state, will this renunciation be available by way of "exceptio" ? Solution : If the claimant has suffered an injury by reason of an unjust condemnation, then he must resort to his own judge, by way of appeal, to supply the failure of jurisdiction ; but an appeal may be renounced in this way ; C. *De temp. appellationum*, the last law. But if he has suffered an injury, then the agreement has no effect, because a wilful wrong would thereby be remitted by anticipation ; ff. *De pactis*, l. *si unus*, § *illud* ; ff. *De pact. dotalibus*, l. *convenire*.

How the commission of injustice, or the denial of justice, is to be proved.

[Ch. clvi.]

The fourth question is, how the commission of injustice, or the denial of justice, is to be proved. Solution: By the records of the first judge, or by witnesses; and the first judge may be required to produce his records, and if he does not do so, that is an act of injustice; C. Vt lite pendente, l. ii.

Whether, if property is seized on the strength of reprisals, it may be detained, by virtue either of the first decree, or of the second?

[Ch. clvii.]

The fifth question is, whether, if property is seized on the strength of reprisals, it may be detained, by virtue of the first decree, or of the second. Solution: If, on the declaration of reprisals, the party was cited and appeared, and judgement was given on the matter, then it is detained by virtue of the judgement; ff. De re iudic., l. *a divo Pio*. But if he does not appear, then, in the first place, licence to seize will be given by the first decree, in order that the annoyance may induce the party to appear; and if he remains contumacious, then licence to detain will be given by the second decree.

Of the form of executing reprisals.

[Ch. clviii.]

It remains to consider the form of executing reprisals declared, and on this many questions arise.

Whether one to whom reprisals are granted may, on his own authority, or by the servants of the magistrate granting them, seize persons against whom they are declared?

And the first question is, whether one to whom reprisals are granted may, on his own authority, or by servants, seize persons against whom they are declared. Solution: Jacobus de Belvisio holds that he may not seize persons or property on his own authority, but only by judicial authority; ff. De re iudicata, l. *miles*. Others add that this is true only if recourse can be had to a judge; otherwise he may act on his own authority; ff. Quæ in fraud. cred., l. *ait prætor*, § *si debitorem*; C. De decur., l. *generalis*. And I think this true. Yet the conditions of the grant should be weighed and observed; De rescriptis, *cum dilecta*; and ff. Mandati, l. *diligenter*.

Whether one who seizes persons and property is bound to present them to the judge, or may retain them for himself?

[Ch. clx.]

The second question is, whether one who seizes persons and property is bound to present them to the judge, or may retain them for himself. Solution: Jacobus de Belvisio holds that he is bound to present them to the judge; ff. De regul. iuris, l. *non est singulis*; the object being to prevent illegal exactions; ff. De offic. præsidis, l. *illicitas*. Others say that this applies to persons captured, who ought to be brought before the judge; C. De decur., l. *generali*; and coll. x^o, De pace iuramento firmata. But property will be seized by reason of the judgement, on the strength either of the first or of the second decree, as was explained above, and will remain with the captor; ff. Vt in poss. legatorum, l. *is cuius*, § *qui legatorum*. And for this there is no more need to go before a judge, for the first grant suffices. In all these matters I think the form of the grant should be weighed.

Whether property seized on the strength of reprisals should be sold, and how, or whether it should be accepted in payment, or be valued?

[Ch. clx.]

The third question is, whether and how property seized on the strength of reprisals should be sold, or whether it should be accepted in payment, or be valued. Solution: Some authorities say it is sold by the authority of a judge; ff. De re iudicata, l. *miles*, § ii. A valuation will be made by the judge on request; C. De iure dot., l. ii; and in arriving at the amount an allowance will be made for expenses; ff. Ad. leg. Falc. l. *in quantitate*; and C. De iure deliberandi, l. *scimus*, § *in computatione*. And in these matters, too, I think that the form of the grant should be observed, as above.

Whether a declaration of reprisals can be executed on holidays?

[Ch. clxi.]

The fourth question is, whether a declaration of reprisals can be executed on holidays. Solution: They can be executed on days which are holidays because of human needs, just as judgements can; C. De iudiciis, the last law. But if the days are holy out of reverence to God, then some authorities say that this may be done to prevent the loss of the whole grant, for instance, if the persons against whom they are granted are . . ., and only come on holidays. They quote ff. De fer., l. i, and l. ii; and C. the same title, l. ii. Otherwise not; C. De feriis, l. *dies*. I cannot accept the second part of this conclusion. For things seized on the occasion of reprisals are seized by virtue either of the first

or of the second decree, or on the strength of the judgement, as was shown above. And all these are forbidden during such holidays ; l. *dies*, already quoted. Also the law specially lays down that on holidays held for human needs, proceedings may be taken in those cases ; ff. De feriis, l. i, and l. ii. But on days which are holy out of reverence to God, no exception is made, and therefore the rule must be observed.

If a man wishes to defend himself, or property seized on the strength of reprisals, what jurisdiction should be invoked ?

[Ch. clxii.]

The fifth question is, If a man wishes to defend himself, or property seized on the strength of reprisals, what jurisdiction should be invoked ? Solution : Some authorities say that if a full execution has been made—if, for instance, the property has been sold or given in payment—then the ordinary jurisdiction is the proper one, and a man will not be heard if he invokes the extraordinary ; ff. De re iudicata, l. *a divo Pio*, § *si post addictum*. But if full execution has not been made, but is still pending, then he may invoke the extraordinary jurisdiction of the judge, which will cause an extract to be made of the records on the strength of which the reprisals were declared, and he may set up a defect in the claim of the person to whom they were granted, or a personal incapacity, or any of the other pleas which were mentioned above. They cite C. De edendo, l. ii ; and C. Vt lite pendente, l. ii ; and ff. De edendo, l. i. And on this, summary jurisdiction will be done. I cannot accept the second part of this conclusion. For if, when the reprisals were declared, the party was cited, and appeared, and took the usual steps in the proceedings, then it is clear that this conclusion cannot stand, because those “ exceptions ” should have been put forward from the first, and cannot be raised after judgement ; C. Sent. rescindi non posse, l. *peremptorias* ; and C. De except., l. *si quidem* ; and Extra., the same title, ch. *pastoralis*. But if, when they were declared, the party was contumaciously absent from the first or second decree, then the result is the same as that caused by the lapse of a year in a real action, because he will not be heard except by the ordinary procedure ; ff. De damn. infecto, l. *si finita*, § *si plures* ; and C. Quomodo et quando iudex, l. *consentaneum*, and the note there ; and De dolo et contumacia, ch. *contingit*. But it might be allowed at the first decree.

Of the remedies of the person from whom the exaction is made.

[Ch. clxiii.]

The remedies of the person from whom the exaction is made belong to this part of the subject. And on this many questions arise.

Whether the person from whom the exaction is made has a remedy against the person for whose debt or wrong it was made ?

And the first question is, whether the person from whom the exaction is made has a remedy against the person for whose wrong or debt it was made. Jacobus de Arena holds, on ff. De verb. oblig., l. ii, that he has a remedy against the person on whose account reprisals were declared ; De neg. gest., l. *nam et Servius* ; ff. Nautæ caup. stabul., l. *licet*, the last section ; ff. De his qui deiec. vel effus., l. *si vero*, § *cum autem*. Others say the contrary, on the authority of ff. De reg. iuris, l. *si quis dolo*, § i. For he suffered the exaction, not because of the private person, but because of the judge who denied justice, or did injustice. They say, therefore, that either the judge is the person from whom the exaction is made, because he did injustice, and then the judge has no remedy ; l. *si quis dolo*, above ; or because he neglected to do justice, and then he has a remedy against the person of whom justice was required ; C. book x, De exact. trib., l. *missi*, at the end. Or, thirdly, he is one of the people, and then the opinion of Jacobus holds ; ff. Nautæ caup. stabul., l. *licet*, at the end, &c.

Whether the person from whom the exaction is made has a remedy against the ruler, as well as against the principal debtor ?

[Ch. clxiv.]

The second question is, whether the person from whom the exaction is made has a remedy against the ruler, as well as against the principal debtor, as was shown above. Solution : The principal debtor must first be sued ; and if he is not solvent, then the ruler, since he, too, himself becomes a debtor ✓ by refusing justice. That this order must be observed appears from ff. De magistr. conven., l. i, at the beginning ; and C. De conven. fisci debitoribus, l. *quoniam*. Lastly, resort may be had to the officials, who might have obliged the ruler to do justice, but neglected to do so ; ff. De tut. et rati. distrahendis, l. i, § *nunc tractemus*.

Whether a person seized on the strength of reprisals may, on his own authority, seize persons belonging to the state in which he was seized ?

[Ch. clxv.]

The third question is, whether a person seized on the strength of reprisals may, on his own authority, seize persons belonging to the state in which he was seized. And it seems that he may, from ff. Quod quisque iuris, the whole title. The contrary is the true view ; for the title Quod quisque iuris applies in the execution of law, as, for instance, if one state has unlawfully declared

reprisals against another, the other may do the like against the first. But it does not apply in the execution of an act and say that if I have robbed you, you may rob me, because that would be allowing retaliation. Against this, ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*. He must return, therefore, to his own state, and demand reprisals against the state in which he was seized.

Whether reprisals can be granted by statutes, in cases not otherwise permitted by the common law ?

[Ch. clxvi.]

The fourth question is, whether reprisals may be granted by statutes, in cases not otherwise permitted by the common law. Solution: A state may grant them against countries fully subject to itself, even in cases not permitted by the common law; but not against countries which are independent, or even allied, as to which see ff. De captivis, l. *non dubito*. The reason is, that a grant of reprisals depends on the determination of a cause about injustice done, or justice denied, and in this one state cannot make rules against another, because "like against like," &c. Secondly, it depends upon whether recourse can be had to a superior of the party refusing to do justice. And on this matter one state cannot make rules against another. For it could not make a rule that reprisals should be declared, without appeal having been made to the superior of the party refusing to do justice. For that would be to destroy the jurisdiction of the superior; De iureiurando, *venientes*. Thirdly, the authority of the superior who declares the reprisals is required, this authority being one which does not itself recognize a superior; and on this a state may rule that, without that authority being appealed to, one person may be seized for another's debt; C. book xi, De omni agro deserto; just as there is a rule that in certain cases a wife is liable for the debt of her husband; C. In quibus [modis] causis pign. contrahitur, l. *satis*; and a son for his father; C. book xii, De primipilo, the last law.

Whether a statute of a state, which ordains that a son is liable for the wrong of his father, may be executed against a son living outside the territory of that state ?

The fifth question is, whether a statute of a state, which ordains that a son is liable for the wrong of his father, may be executed against a son living outside the territory of that state. Solution: Either the son was born at the time of the father's wrongful act; and then either the question is whether the statute can be executed against the son living elsewhere, and it cannot; ff. De re iudicata, l. *a divo Pio*, the penultimate section; and ff. De rebus. auctor. iudi. possidendis, l. *cum unus*, § [cum is] *is qui*; or the question

is whether a "condiction" can be brought against him on the statute; and it can, because an action follows the person against whom it lies; C. De longi tempor. præscriptione, the last law. This is true, unless the son had acquired a domicile elsewhere before the commission of the wrong, or was absent by reason of a domicile of origin, because then the other state, as having priority, might protect him from the statute. But if the son is born after the commission of the wrong, then no action will lie against him. For the statute must be understood to refer to sons then existing; ff. De noxal., l. *in delictis*, § *si extraneus*; ff. De milit. testamento, l. [si] *Titius*. My answer is the same, if the statute ordains that one citizen is liable for the wrong of another. A person newly become a citizen is not liable for old debts; C. De decur., l. *providendum*; and note Dinus on ff. Ad municipalem, l. *incola*.

Whether it may lawfully be agreed that one person is to be liable for another?

[Ch. clxvii.]

The sixth question is, whether it may lawfully be agreed that one person is to be liable for another. Solution: By express agreement of private persons, no; in Authent., Vt non fiant pignorationes. Even if one agrees that another over whom one has jurisdiction is to be liable; C. Ne filius pro patre, throughout. And although a lord cannot do this, yet the lord's judge may cause persons of such a condition to be seized.

Of particular war waged for compurgation, which is called the "duel."

[Ch. clxviii.]

It remains now to consider the duel, in treating of which I shall first ask what a duel is; secondly, how many kinds of duel there are; thirdly, by what law it is allowed, and by what forbidden; fourthly, for what reason it is allowed, and for what forbidden; fifthly, for what causes a duel is lawful; sixthly, between whom it is lawful; seventhly, how it should be waged.

What is a duel?

[Ch. clxix.]

As regards the first question, I say that a duel is a corporeal fight between two persons, deliberate on both sides, designed for compurgation, glory, or exaggeration of hatred. I said a "fight." This is the genus to which it belongs. I said "deliberate on both sides." This distinguishes it from a fight in necessary self-defence, as to which see ff. De iustit. et iure, l. *ut vim*; C. Vnde vi, l. i; ff. De vi et vi arm., l. i, § *vim vi*; ff. Ad leg. Aquil., l. *scientiam*, § *qui cum aliter*; De restit. spoliat., ch. *olim*, i; and Clemen., De homicidio, si *furiosus*.

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For in a fight of that kind there is ordinarily no deliberation on the part of the attacked, but only on the part of the attacker, or on the part of neither, as appears from Clemen., *si furiosus*, just cited. But in a duel there is deliberation on both sides. I said "between two persons," because a fight is then properly called a duel, following the etymology of the word; Instit., De donat., § *est et aliud*; xvi, q. i, *si cupis*; dist. xxi, *cleros*; De præbend., *cum secundum*. "A fight between two persons," to distinguish it from contracts formed between two persons by mutual agreement of the parties; Instit., De obligationibus, with the rescripts following. And I said "corporeal," to distinguish it from a judicial fight, which also takes place between two persons, as plaintiff and defendant; C. De iudic., l. *rem non novam*, § *patroni*; and the same title, l. *properandum*; and De verbor. significatione, ch. *forus*. For there the contest is not fought by the strength of the body, but by the laws; see the laws just cited. I said "designed for compurgation, glory, or exaggeration of hatred"; for this touches the end, and indicates the kinds of duel, as follows below. This, then, concludes the description of the genus of duel.

How many kinds of duel are there?

[Ch. clxx.]

As regards the second question, it must be noted that the duel, as above described, is regarded generally, and, as I suggested at the end of the description, the kinds of duel are indicated by the words placed at the end; for there are three kinds of duel. For a duel is fought either for exaggeration of hatred, or to win public glory by the strength of the body, or for the compurgation of some accusation brought.

How a duel is fought for exaggeration of hatred.

It is fought then for exaggeration of hatred, when men are induced by mere hatred, natural in its origin, and of that singular naturalness which natural philosophers call the "specific form," to exterminate one another. And I do not find that this duel is regulated by legal rules; but it springs from natural first principles, as I shall at once show, and because it is approved by sensual experience.

How a duel is fought to win public glory.

It is fought, secondly, to win public glory, as in public spectacles, when two men prove their bodily strength in various ways. I find that this form of duel is regulated by both civil and canon law. By civil law: ff. Ad leg. Aquil., l. *hac actione*, § *si quis in colluctatione*; C. book xi, De glad. toll., the single law; C. De re iudic., l. *commodis*; ff. De his qui not. infam., l. *athletæ*; C.

De athletis, l. i ; C. Quæ res pign. obl. poss., l. *spem* ; ff. De donat., l. *donationes*. Note the gloss on Instit., De hæredit. quæ intest. defer., § *interdum*. By canon law : De clericis pugnantis in duello. But there it is also for compurgation ; De torneam., throughout. But it is not properly the duel, but the "pancratium" ; ff. Ad leg. Aquiliam, l. *hac actione*, § *si quis in colluctatione*.

How a duel is fought for the compurgation of an accusation.

It is also fought, thirdly, for compurgation ; that is to say, when an accusation is laid on a person, and the party challenging to the proof, either with or without other proofs, offers to prove it by his bodily strength, and a duel is fought, and the person challenged "purges" himself in this way. And this also is regulated by law ; De cler. pugn. in duello, cited above ; De purga. vulgari, throughout ; ii, q. v, the whole question ; and in the Lombard law, to which I shall return when I discuss that part of the subject.

By what law is the duel permitted, and by what forbidden ?

[Ch. cxxi.]

As regards the third question, namely, by what law the duel is introduced, it is well to explain the several kinds of duel above set forth, showing, as to each, by what law it is permitted, and by what forbidden. And first, of the duel which arises on account of exaggeration of natural hatred, as to which we must understand that this duel was introduced by natural law, in the sense of an instinct of nature, proceeding from sensuality to some desired object, this being the second signification of the term, as the gloss notes on dist. i, *ius naturale* ; and ff. De iustit. et iure, l. i, § *ius autem naturale*. And the duel itself is forbidden by natural law, in the sense of an instinct of nature proceeding from rational intelligence, which is called natural equity. There is also a third meaning of natural law ; see the canon quoted, *ius naturale*. It is also forbidden by natural law in the sense of the law containing the moral precepts of divine law, which is a fourth meaning of the term ; see the canon just quoted. This duel is also forbidden by positive law ; that is to say, by canon and civil law. Each of these points must be proved.

How the duel which is fought for exaggeration of hatred is introduced by natural law, in the sense of an instinct of nature, proceeding from sensuality towards some desired object.

I said that this form of duel is introduced by natural law, in the sense of an instinct of nature, proceeding from sensuality towards some desired object. This is demonstrated as follows : Whatever is productive of the immediate cause of an effect is consequently productive of that effect. But this natural

law, originally inclining towards such desire, is the inducing cause of this sensual desire for duelling. Therefore it is the inducing cause of the duel. The major premise is proved. For whatever sufficiently impresses itself on the cause of the productive cause thus remotely, impresses itself on the effect; ff. Ad leg. Corn. de sicar., l. *nihil*; C. the same title, l. *si quis notandi*; dist. i, *studeat*; and can. *si quis viduam*; De homicidio, *de cetero*, and ch. *presbyterum*. The minor premise is proved. For from natural disposition, proceeding from natural first principles, both higher and lower, come the various inclinations of men's desires. For, if any personal merit or demerit is eliminated, that which displeases me will naturally please you, and conversely; and it is from natural disposition, if any accidental quality is eliminated, that a man loves and hates. Any one can test this in himself. But the cause of this is easily discovered, if we observe the celestial bodies. For persons who, at the time of their birth and at the moment of their birth, have a uniform correspondence of the heavenly configuration, and whose paternal origins agree in complexion, are undoubtedly by nature the firmest friends. So if these signs are repugnant, they are one another's bitterest enemies. For uniform effect must follow from uniform cause; C. Ad leg. Falc., the last law; ff. Ad leg. Aquil., l. *illud*; ff. De fonte, l. i; De constit., *translato*; and De transl. episcoporum, ch. *inter corporalia*. And yet here we must note that this natural enmity between man and man, as I said before, proceeds from a singular natural disposition, which natural philosophers call "the specific form." For if we observe the natural disposition of the human species, there ought to be friendship between men, on account of the uniformity of complexion related to the human form; and on this account the laws say that between man and man there is a duty of humanity, to be observed on one side and the other; ff. De servis expor., l. *si servus*, at the end; and C. De neg. gest., l. *officio*, and the gloss there. And so this does not arise from the natural disposition of the species, because we do not find it existing naturally if we refer to the several species of animals. For between the several species of brutes there is a sort of treaty of union and cohabitation, because of the uniformity of complexion related to the specific form. But between species and species there is sometimes the extremity of repugnance, inducing one to exterminate the other; for instance, between hawks and birds that are good for fowling, cats and mice, dogs and hares, and so on. It proceeds, therefore, from some individual disposition of repugnance of first principles, higher and lower. Any one may experience the effect in himself. Yet this disposition does not ordinarily induce a duel immediately, but only through intermediate acts to which the persons quickly proceed, though I believe that the repugnance of individual disposition might be so strong that men might proceed to a duel at sight. And this happens when men are ruled by sensuality alone, and not by any consideration of reason. From this discussion we may infer how this form of duel is introduced by natural law, understood in the sense explained.

How the duel which is fought for exaggeration of hatred, is forbidden by natural law, in the sense of rational intelligence, and by divine law, canon law, and civil law.

[Ch. clxxii.]

It remains to consider what I said in the second place on this subject. For I said that this duel was forbidden by natural law, in the sense of rational intelligence, and therefore by the law of nations ; and by natural law in so far as it contains the moral precepts of the divine law ; and by canon law, and civil law. This may be demonstrated more clearly than day, beginning with the divine law. For one of the precepts of the Decalogue is, " Thou shalt not kill " ; and thus it is forbidden by the divine law, and this is the ordinary rule. And if the instance of Jephthah be cited, who killed his daughter, and yet did not sin, by divine law ; Judges, ch. xi ; xxii, q. iv, *unusquisque* ; xxiii, q. v, *si non licet* ; and of Samson, who killed many persons, and himself ; Judges, ch. xvi ; xxiii, q. v, *si non licet* ; they prove nothing to the contrary, because these acts were inspired by the Holy Spirit, as Augustine writes in the first book of the *De Civitate Dei*, quoted in xxiii, q. v, ch. *si non licet*. So, therefore, it is forbidden by divine law by the precept, " Thou shalt not kill " ; Deuteronomy, ch. v. It is also forbidden by canon law ; *De homicid. volunt.*, dist. i, throughout ; xxiii, q. v, *si non licet*. It is also forbidden by civil law ; ff. *Ad leg. Corn. de sicar.* ; and C. the same title, throughout. And if you say that those laws forbid voluntary homicide, and therefore the kind of duel from which voluntary homicide arises, but that homicide arising from the duel which is introduced by natural disposition is not voluntary, being introduced naturally, and that therefore those laws do not conclude this case, the solution is ready to hand. For although it is introduced by a natural bodily disposition, yet the dictates of natural intelligence dispose to the contrary. And the latter should be obeyed ; for the natural disposition does not compel, but the will remains free ; xxiii, q. iv, *De Tyriis* ; and ch. *Nabuchodonosor* ; and *De Pœnit.*, dist. ii, ch. *sicut enim* ; and the Philosopher, *Ethics*, iii. Even astrologers too, who demonstrate this more effectively, assert the same. Hence Ptolemy says, in the *Centiloquium*, tenth phrase, " a wise soul dominates the stars." So, therefore, although the bodily disposition proceeds from a natural first principle, yet natural intelligence remains, and disposes to the contrary. So it might be said of the several kinds of moral vices. For particular men are naturally inclined to particular vices : some are proud, some luxurious, some miserly, and so on. Yet they are not excused, because they are not actually compelled ; xxiii, q. iv, ch. *Nabuchodonosor*. Hence the saying of the Philosopher in *De anima*, iii, the treatise on motion, that between sensitive and intellectual appetite there is sometimes opposition. For the sensitive tends in one direction, the intellectual in another ; and if the intellect prevails over sense, the motion is rational and natural, as if a higher sphere moves a lower. But if the contrary happens, the motion is contrary to nature, as if a lower sphere moves

✓ a higher ; for although the motion of sense proceeds from nature, inclining to vice, yet it is contrary to nature, if sense does not obey intellect, as a subject its lord, as the same Philosopher says in the first book of the Politics. This kind of duel is also forbidden by natural law, in the sense of natural intelligence, which is the same thing as the law of nations. This is proved as follows : For common and natural equity springs from natural intelligence, disposing it to the conservation of the universe ; and thence positive law had its origin, nay, it would be truer to say, it is itself the equity of natural law with some additions or omissions ; ff. De iustit. et iure, l. *ius civile*. Since, therefore, this natural equity tends to the conservation of the universe, it reprobates the extermination of a man, which is a thing tending to the destruction of the world ; and I speak of extermination tending to the destruction of the world, because the extermination of some men tends to the conservation of the world, for instance, when bad men are exterminated. For on this account it is in the interest of the commonwealth that they should be punished ; ff. De publ. et vecti., l. *licitatio* ; ff. Ad leg. Aquil., l. *ita vulneratus*, at the end ; ff. De fideiuss., l. *si a reo* ; De sent. excom., *ut famæ*. From this discussion we may clearly infer how this kind of duel is forbidden by divine law, by the law of nations, by canon law, and by civil law.

How the duel which is fought for the sake of glory is introduced by natural law, in the sense of an instinct of nature proceeding from sensuality.

[Ch. clxxiii.]

It remains to consider what law introduced, and what forbids, a duel fought for the sake of the glory of victory at a public spectacle. And I say that this kind of duel was introduced by natural law, in the second signification of the term—that is to say, an instinct of nature proceeding from sensuality—but that it is forbidden by natural law in the sense of the law of nations and the divine law. It is also forbidden by canon law and civil law—with qualifications, however, as I shall show presently. Let us demonstrate each of these statements. I said that it was introduced by natural law in its second signification. This is proved by the arguments set forth in the last section. For sensual inclination proceeding from natural first principles induced to the trial of bodily strength merely to win glory. Therefore it induces this kind of duel which proceeds from that cause, since a producing cause produces its effect ; see the laws cited in the last section. This kind of duel, however, is less hateful than the first kind, if we regard the end of each. For the first kind of duel has extermination for its end, by reason of abiding natural enmity. But the present kind does not necessarily lead to extermination, but to victory, which may be won without extermination. Therefore it is less hateful, since men's acts are distinguished according to the ends intended ; ff. De furtis, l. *verum*, and l. *qui iniuriæ* ; ff. De [fal.] furtis, l. *qui ea mente* ; xv, q. vi, ch. i ; xiv, q. v, *quidquid* ; De sent. excom., *cum voluntate*. Hence it is that the Philosopher says in Ethics,

iv, that one who commits fornication with a woman that he may get money thereby, is not an adulterer, but a miser. It follows, therefore, that if we weigh the end, this kind is less hateful than the former. This is confirmed by the following consideration : The first kind arises from hatred, which in itself is detestable, if it arises without reasonable cause, as it does there. But this kind of duel arises without hatred. For even natural friends would fight duels at a spectacle to the end of winning glory. It is confirmed as follows : A thing which is less far removed from natural equity, is less hateful ; but this second kind of duel is less far removed from natural equity. Therefore, &c. The major premise is proved. For detestation and approbation of acts proceed from natural equity, on which are founded the prohibitions and permissions of the law ; ff. De iustit. et iure, l. *ius civile* ; and dist. i, can. *ius naturale*. The minor premise is proved. For this duel departs from the equity of natural law only because the killing of a man might follow from it, which is an act tending to the destruction of the universe, upon which equity the prohibition of the new civil law is founded ; C. book xi, De gladiat., the single law. But it was not prohibited by the old law, because proceedings against persons killing one another in this way were remitted ; ff. Ad leg. Aquiliam, l. *[hac] qua actione, § si quis in colluctatione*. But the first kind is far removed from natural equity. In the first place, because it tends to the necessary extermination of one or both. It differs also in being inspired by hatred, which natural equity abhors, if it arises without cause. Therefore it is more detestable. This is confirmed as follows : That which is wholly injurious and beneficial in nothing, is more hateful than that which is partly beneficial and partly injurious. But the first kind is wholly injurious, and beneficial in nothing ; but this second kind is partly beneficial. The major is clear. For acts are classed as laudable and blameworthy by reason of the laudability and blameworthiness of their ends, since in such matters the end is weighed ; ff. De ritu nupt., *si quis in senatorio* ; ff. De iure fisci, l. *non intelligitur, § si quis palam* ; ff. De iudiciis, l. *cum furiosus*. The minor is proved. For the first kind has for its sole object mutual extermination, which is injurious ; but the second takes place in a public spectacle for the pleasure and recreation of the people. And this is why games and spectacles are permitted ; C. book xi, De spectacul. et scænic. et lenon., the whole title, except the last law ; and C. De expen. ludor., the single law ; a Greek constitution. This discussion leads to the conclusion that this kind of duel was introduced by natural law, in the second signification of the term, and that it is less hateful than the first kind.

*How the duel which is fought for the sake of glory is forbidden
by divine law.*

[Ch. clxxiv.]

It remains to consider how this kind of duel is forbidden. And I said that it was forbidden by divine law, by the law of nations, and by positive law,

that is, by canon law and civil law. Now that it is forbidden by divine law may be proved thus : For when a thing is forbidden by any law, everything which leads to that thing is also forbidden. But homicide is forbidden by divine law, and this kind of duel leads to homicide. Therefore, &c. The major premise is proved by ff. De sponsal., l. *oratio* ; ff. De fideius., l. *cum lex* ; C. De usuris, l. *eos*, at the end ; C. De usuris rei iudic., the last law, at the end ; ff. De pet. hæred., l. *sed si lege*, § *item veniunt* ; ff. De mino., l. iii, § *sed utrum*. The minor is proved by Deuteronomy, ch. v, "Thou shalt not kill." But that this kind of duel leads to homicide is clearer than day. This is confirmed as follows : An act which is alien from the fountain of charity, is forbidden by divine law ; and this kind of duelling is so alien. Therefore, &c. The major is proved ; for charity is the foundation of all the virtues, and excludes the vices ; De Pœnit., dist. ii, *caritas est*, and ch. *ergo*, and the first part of that "distinctio" throughout ; and so a thing which is alien from charity savours of the nature of sin, and is therefore forbidden by divine law. The minor is proved. For charity is the love of God, and of one's neighbour as oneself ; De Pœnit., dist. ii, ch. *proximos* ; but one who fights a duel at a spectacle fights in order to conquer his neighbour, and so loves him not. Therefore it is forbidden by divine law.

*How the duel which is fought for the sake of glory is forbidden
by the law of nations.*

I said, too, that it was forbidden by the law of nations. This is proved as follows : An act which tends to the destruction of the universe is forbidden by the law of nations. This kind of duelling is such an act. Therefore, &c. The major is proved as follows : Natural equity, on which the law of nations is founded, tends to the conservation and increase of the universe ; ff. De iustit. et iure, l. i, § *ius naturale* ; and ff. the same title, l. *ex hoc iure*. The minor is proved thus : This kind of duelling tends to the destruction and extermination of a man, who is the noblest part of the universe, nay, who is the end of things created ; ff. De usuris, l. *in pecudum* ; therefore it is forbidden by the law of nations. This is confirmed thus : An act which is opposed to the precepts of natural equity, which is the law of nations itself, or its foundation, is forbidden by the law of nations. This kind of duelling is so opposed. Therefore, &c. The major is proved thus : Everything whose opposite is commanded is forbidden by the law of nations, since the same rule applies to opposites ; ff. De his qui sunt sui vel alien. iuris, l. i ; Instit., the same title, at the beginning ; dist. xxxii, *hospitiolum*. The minor is proved thus : It is one of the precepts of the law of nations, that a man is not to be enriched at another's expense ; ff. De condic. indebiti, l. *nam hoc* ; and Sext., De regul. iur., rule *locupletari*. It is also a precept of the law of nations, that you should not do to another what you do not wish to be done to yourself ; see the beginning of the Decreta ;

but this kind of duelling is opposed to both precepts. And in the first place, it is opposed to the first precept because the duellist seeks glory from the disgrace of his fellow and neighbour, and he would not wish this to be done to himself ; therefore it is forbidden by the law of nations. This is confirmed thus : An act which is a kind of unlawful war is forbidden by the law of nations. This kind of duelling is so. Therefore, &c. The major is proved, because only lawful war has been introduced by law ; ff. De iustit. et iure, l. *ex hoc iure* ; and ff. De captivis, l. *hostes*. The minor is obvious. For a duel is not a war declared by the authority of a prince, nor for necessary defence. Therefore, &c. From this we may infer that this kind of duelling is forbidden by the law of nations. But the following objection will at once be raised to the foregoing arguments. This kind of duelling takes place for a test of fortitude, and fortitude is a moral virtue, nay, even a cardinal virtue. But neither moral virtues nor their exercise are forbidden by the law of nations. Therefore the conclusions just reached do not stand. But that there are, here, acts of true fortitude, which is a moral virtue, is obvious. For in this kind of duelling there are waiting and attack. Solution : In the examination of this contrary conclusion we must observe that there is a true fortitude, which is a moral and a cardinal virtue, and that neither it nor its operation is forbidden by the law of nations. There are also counterfeit forms of fortitude, as to which see the Philosopher, Ethics, iv, treatise on fortitude, which participate in the acts of attacking and awaiting, and are five in number. For some men attack on account of the fear of punishment, because those who flee from a war are punished. Others attack on account of their experience in the art of war, as mercenaries ; and these, as they readily attack, so they readily flee, as the Philosopher says in the passage above cited. Others attack on account of anger, without weighing the danger. Others attack on account of hope, not believing in the presence of danger, and would not attack if they thought that danger was present. Others attack for the sake of winning the world's applause, because it is usual to praise the brave, and to scorn the timid. These five qualities are counterfeit imitations of true fortitude, which is a true moral and cardinal virtue. But for true fortitude these conditions are required ; namely : that a man should act knowingly, for an act done in ignorance is not an act of virtue, because prudence ought to control every act of virtue ; secondly, he must act from choice ; thirdly, he must choose the act for its own sake, that is to say, for the sake of the goodness and worth of the act in itself, and not for the sake of something extrinsic to it ; fourthly, he must act firmly and gladly. All the counterfeit forms mentioned above fall short, more or less, of the true form. But they all fall short in this, that those who act according to them, do not act for the sake of the act itself, that is, for the sake of its goodness and worth. So in the case proposed ; those who do the acts of attacking and awaiting in this kind of duel, do them for the sake of glory, not for the sake of the goodness and worth of the act in itself ; nor, again, are they acting herein in performance of any duty. These arguments are collected from the

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Philosopher's treatise on fortitude, Ethics, iv. We may conclude, therefore, from the foregoing, that this kind of duelling is forbidden by the law of nations.

How the duel which is fought for the sake of glory is forbidden by canon and civil law.

I said that this kind of duel is forbidden by canon and civil law. Clearly it is so by canon law, since that law, in its prohibitions and permissions, imitates the paths of divine law, by which this duel is forbidden, as I showed above. It is also proved by *De pugnan. in duello*, the red and black, although there clerks are referred to, because the same rule applies to all. It is better proved by the title *De torneamentis*, where burial is denied to those who die in tournaments. This, then, is clear. But how it is forbidden by civil law must be considered at some length, because this kind of duel seems to have been allowed by the old law of the Digest. This is proved by the text of ff. *Ad leg. Aquil.*, l. *hac actione*, § *si quis in colluctatione sive in pancratio*, where it appears that a penal action does not lie against one who kills another in a duel of pugilists. It appears to be forbidden by a new law of the Code, as is proved by the text of C. book xi, *De gladiat.*, the single law. What, then, shall we say? Shall we say that the old law has been amended by the new? ff. *De legibus*, l. *non est novum*. Here I think we should observe that a fight is not necessarily bloody, where it does not tend to the shedding of blood, as when men wrestle with their arms, or the like; and I do not find that this kind of wrestling is forbidden by the civil law, either old or new; nay, the new law even permits spectacles for the recreation of the people; C. book xi, *De spectac.*, the whole title, except l. *lenones*; and C. the same book, *De expen. ludorum*, throughout. But a fight may tend to the shedding of blood, as in tournaments and in a duel to the death; and this is undoubtedly forbidden by the new law of the Code; C. book xi, *De gladiat.*; and the reason of the prohibition is suggested when it is proved that it is forbidden by divine law, and by the law of nations. But it appears to be permitted by the old law; ff. *Ad leg. Aquiliam*, l. *hac actione*, § *si quis in colluctatione*. But perhaps you will make the following objection. You will say that this duel is forbidden by the law of nations; but the civil law is not an equity different from the equity of the law of nations; it is the equity of the law of nations itself, with details and limitations of its own added; ff. *De iustit. et iure*, l. *ius civile*; therefore, if it is forbidden by the law of nations, it cannot be permitted by the civil law; otherwise the civil law will be opposed to the law of nations. I have hesitated at this opposition; but I have weighed the words, § *si quis in colluctatione*, and the intention which I believe the legislator to have had. And by way of evidence I observe that permission may be of three kinds. It may be a simple permission, which remits and waives a penalty; dist. iv, *denique*; for, as the gloss there notes, a remission of penalty, not of blame,

is there made. The second form of permission removes the obstacles to that which is permitted, as the text says that Jews are permitted to dwell among ourselves, for the obstacles which hinder them from being able to dwell with us according to their rites are removed ; dist. xlv, *qui sincera*. A third form of permission is also found, which assists the act which is permitted ; for example, we say that the Church sometimes permits a clerk to be put to death by a secular judge, by affording assistance, because it actually hands him over, De iudic., ch. *cum non ab homine* ; De crim. falsi, ch. *ad falsariorum* ; and De verb. significatione, ch. *novimus*. The second form of permission adds something to the first, because it removes an obstacle, which the first did not, for it only remitted a penalty. The third adds something to the second, because it assists the permitted act, which the second did not, for it only removed obstacles. Now to apply the words to the case in point, if I rightly understand the section, § *si quis in colluctatione*, the text there remits the penalty on one who kills another in a wrestle, and it adds the reason, which is that the injury is not intentional. The permission given will therefore be the first form, which remits a penalty, but I nowhere find the law providing that this duel is permitted by the second or third forms of permission. But there is no opposition if the law of nations forbids, and the civil law remits the penalty ; for the civil law, which imposes a penalty for homicide, imposes it for an intentional act ; and so, as intention is here wanting, the civil law remits the penalty, as shown above. From this discussion we may infer by what law this kind of duel is forbidden, and by what it is permitted.

For what reason is the duel permitted, and for what is it forbidden ?

[Ch. clxxv.]

In the fourth division of the subject, which asks for what reason it is permitted, and for what forbidden, we must consider what law forbids, and what permits, the duel of compurgation. And this is properly and strictly called "duel" in ordinary usage. And I say that the duel is forbidden by divine law, and by the law of nations, and by positive law. By the canon law, without exception. By the civil law, as a general rule ; but it is permitted in certain cases by the Lombard law, as I shall show when I discuss them.

How the duel of compurgation is forbidden by divine law.

That this duel is forbidden by divine law is proved as follows : An act which is a temptation of God is forbidden by divine law. But this duel is so. Therefore, &c. The major is proved by the precept, "Thou shalt not tempt the Lord thy God." The minor is proved ; for God is tempted when anything against nature, which is not possible except by a divine miracle, is asked of

Him, as it is directly in this duel of compurgation. For it is natural that a stronger and more skilful man should conquer a less strong and less skilful ; nor can the contrary happen in the natural order of things. But sometimes the less strong and less skilful has justice on his side ; and by the duel we ask that he may obtain the victory, and his justice be declared. So, therefore, God is tempted to work a miracle. This is confirmed thus : An act which is invented by the contrivance of the Devil is forbidden by divine law. This duel is so. Therefore, &c. The major is proved. For nothing is common to God and the Devil, to light and darkness. The minor is proved by ii, q. v, ch. *Mennam* ; and ch. *consuluiti*, in the same cause and question. This is confirmed thus : An act by which an innocent person is condemned, is forbidden by divine law. This duel is such an act. Therefore, &c. The major is proved. For God does not wish the innocent to be condemned ; xxii, q. ii, ch. *quæritur*. The minor is proved by De purg. vulgari, ch. *significantibus*. Therefore, &c.

How the duel of compurgation is forbidden by the law of nations.

Secondly, I said that this duel is forbidden by the law of nations. This is proved as follows : An act which is opposed to natural equity, on which the law of nations is founded, is forbidden by the law of nations. But the duel of compurgation is such an act. Therefore, &c. The major is clear. The minor is proved ; for the equity of the law of nations dictates that offenders should be punished, the innocent acquitted. But in this duel the reverse sometimes occurs. Therefore it is forbidden by the law of nations. It is also opposed to the precept, "quod tibi non ius," at the beginning of the Decreta.

How the duel of compurgation is forbidden by canon law.

I said that it was also forbidden by canon law. This is clear from De purg. vulg., throughout ; De pugnan., throughout ; ii, q. v, from ch. *consuluiti* to the end of the question. And the same reasons might be given which were given to prove that it is forbidden by divine law, since canon law follows the prohibitions and permissions of divine law. This is confirmed. And this proves also that it is forbidden by civil law. For an act which excludes the observance of positive law is forbidden by positive law. This duel does so. Therefore, &c. The major is proved. For if an observance is ordained by positive law, it follows that the exclusion of the observance is forbidden ; for as one rule governs one case, the opposite rule governs the opposite case ; ff. De his qui sunt sui vel al. iur., l. i ; Instit., the same title, at the beginning ; dist. xxxii, *hospitolum*. The minor is proved ; for positive law has provided actions, both civil and criminal, and a whole judicial system, whereby it proceeds to declare the rights of parties ; C. De iudiciis, l. *properandum* ; Authent.,

offeratur; C. De litis contest., the single law; C. De sentent. et interloc. omn. iudic., l. *prolatam*; and De probationibus, ch. *quoniam contra*; so that every man may receive his due; xii, q. ii, *cum devotissimam*; ff. De iustit. et iure, l. *iustitia*; and Instit., the same title, § *iustitia*. But duelling utterly excludes this observance. Therefore this duel is forbidden by positive law. This is confirmed thus: An act whereby justice is denied to parties is forbidden by positive law; but this duel is such an act. Therefore, &c. The major is proved, because positive laws are promulgated to this end by divine permission through the mouths of princes; C. De long. tempo. præscript., the last law; dist. viii, *quo iure*; xvi, q. i, *placuit*. The minor is proved, because in this duel it sometimes happens that the innocent falls, and thus a wrong is inflicted on him; and it sometimes happens that the guilty prevails and so justice is not done to the challenger. This discussion leads to the conclusion that this kind of duel, the object of which is the compurgation of an accusation, will be forbidden by positive law; by canon law, without exception; by civil law, as a general rule.

How the duel of compurgation is forbidden by civil law, as a general rule.

I said, also, that as a general rule this duel is forbidden by civil law. It is allowed, however, in two cases by the Lex Frederici, De pace tenenda et eius violatoribus; for example, if a man kills another in times of peace, and there is no doubt about the homicide, he is punished by capital punishment as a breaker of the peace, unless he wishes to prove by a duel that he did the act in self-defence, and this is a special case in which the accused has an option of the duel. The other case is, that if a man wounds another in times of peace, he will be punished, unless he wishes to prove that he did it in self-defence. These two cases are in De pace tenenda et eius violatoribus, the single law, the first in § *si quis hominem infra pacem*, the second in § *si quis alium*, in the same law. But the Lombard law allows it in other cases, as I shall show below. This concludes the third principal part of this treatise, on the question what law introduced the duel, and what law forbids it, the several kinds of duel being distinguished. From the above, therefore, the explanation of the fourth part is clear, namely, for what reasons it is forbidden and permitted. For the first duel is forbidden by every law, and permitted by none; and the reasons have appeared above. So in treating of the second, and of the third, I reduce the several matters debated in the several parts to this proposition.

In what cases is the duel of compurgation permitted?

[Ch. clxxvi.]

We must consider the fifth principal head, namely, in what cases the duel is permitted. Of the first kind, I have said that it is permitted in no

case. Of the second kind, I have said in what sense it is permitted. We must now consider the third kind, since the Lombard law permits it in several cases, and devote the rest of the treatise to this third kind alone.

How the Lombard law permits the duel of compurgation in twenty cases.

We must ask, then, in what cases this duel is permitted, besides the two noted above, which are found in the *Lex Frederici, De pace tenenda et eius violatoribus*. Solution: Duel is permitted on a charge under the *lex Iulia maiestatis*, when one man brings that charge against another; *Lombarda, De publicis criminibus, l. si quis*, the last law. Secondly, when a wife is charged with having been privy to the death of her husband; *Lombarda, De consilio mortis, l. si mulier*, the last law. Thirdly, in the wrong of "cucurbitatio," if one calls another "cucurbita"; *Lombarda, De conviciis, l. si quis alium*. The fourth case is where a homicide is committed during a truce; *Lombarda, De homicidio, l. qui intra treugam*. The fifth is for a homicide committed by stealth; *Lombarda, De homicidio, l. liber homo*. The sixth is in a charge of parricide, if it is said to have been committed out of desire for the dead man's goods; *Lombarda, De parricidio*, the last law, at the end. The seventh concerns a theft by a slave, if the master should deny that his slave committed the theft; *Lombarda, De furtis, l. si quis alium*, which, according to some, was a law "convalcosiana." The eighth is on a charge of adultery, as if one is accused of having committed adultery with another's wife; *Lombarda, De adulterio, l. iii*. The ninth is if a man says that adultery has been committed with a woman, and wishes to prove it in this way; *Lombarda, De iniur. mulier., l. ii, si quis puellam*. The tenth is if it is said that a man has wrongfully possessed a movable or immovable thing for thirty years; *Lombarda, De præscript., l. si quis alium*. The eleventh is between conflicting witnesses; *Lombarda, De testi., l. si quis cum altero*; which is allowed if the witnesses are called by opposite parties; if by the same party, there is no duel. For either the plaintiff proves his case, and the defendant is condemned, or he proves nothing, and the defendant is acquitted. But if they are called by opposite parties, and in other respects the sides are equal, then a duel takes place. The twelfth case is for a father's debt, against a son who denies it; *Lombarda, Qualiter quis se defendat, et in quibus casibus pugna prohiberi vel fieri debeat, l. si quis post mortem*. And the true meaning of that law is that it refers to a debt arising from delict. The thirteenth case is for arson, if action is brought against the wrong-doer; *Lombarda, Qualiter quis se defendat, etc., l. si quis alium*. But a duel does not take place if action is brought against an accessory; *Lombarda, De consiliis illicitis*, the single law, at the end. The fourteenth is for adultery, as if a husband says that his wife is an adulteress; *Lombarda, Qualiter quis se defendat, etc., l. si quis uxorem*. The fifteenth is if a husband suspects that another has misconducted himself with his wife;

and by misconduct the law means carnal intercourse ; Lombarda, Qualiter quis se defendat, etc., *si quis amodo*. The sixteenth is for perjury ; Lombarda, Qualiter quis se defendat, etc., *l. de furto*. The seventeenth case is a duel for "investiture," as when one man says that he was invested first, and was ejected from possession, and another says the same ; *l. de investitura*. The eighteenth is for the denial of a deposit, as where more than twenty solidi have been deposited ; *l. si quis pro se*. The nineteenth is where a man is accused of having extorted a charter by violence ; Lombarda, Qualiter quis se defendat, etc., *l. si quis dixit*. The twentieth and last case is a duel on a claim for a slave's freedom ; *l. si servus*. Some say that this law was "convalcosiana."

Between whom should a duel be fought ?

[Ch. clxxvii.]

We must consider the sixth principal head, namely, between whom a duel may be fought.

How the duel of compurgation should generally be fought between principals.

And I say that the rule of the Lombard law, which allows a duel in the cases above mentioned, is that a duel should be between principals. But to this rule there are eight exceptions. First, if youth forbids it. Second, if the decrepitude of age, for therein is labour and pain. Third, if some infirmity prevents a party from fighting a duel. These three cases are found in Lombarda, Qualiter quis se defendat, etc., *l. quacunque lege* ; and De parricidio, the last law. The fourth is if a slave, who is in the quasi-possession of servitude, claims his freedom ; then the master fights by a champion ; Lombarda, Qualiter quis se defendat, etc., *l. si quis servum propter appetitum*. The fifth is if the person is ecclesiastical ; for instance, where clerks or counts have causes against one another, or against others ; then they fight by champion ; Lombarda, Qualiter quis se defendat, the last law. The sixth is where a woman is accused of adultery ; Lombarda, the same title, *l. si quis uxorem*. The seventh is if the witnesses of the plaintiff contradict the witnesses of the defendant ; then the witnesses of the plaintiff should choose a champion, and the witnesses of the defendant another . . .⁽⁷⁾ ; Lombarda, the same title, *l. si quis cum altero*. The eighth is if a slave is accused of theft ; Lombarda, De furtis, *l. si servus, dum de furto*. To-day, however, by custom any one is permitted to have a champion.

How is a duel to be fought ?

[Ch. clxxviii.]

We must consider the seventh principal head, namely, how a duel is to be fought.

How the duel of compurgation is modelled on a contentious trial.

And here I premise that a duel is modelled on a contentious trial ; for just as in a trial there are plaintiff, defendant, judge, instruments supporting the case, by means of which, taken in the wide sense as including everything which supports the case ; ff. De fide instrum., l. i ; a declaration of the truth is arrived at, so that a definite judgement may be pronounced, so in a duel there are plaintiff and defendant, that is, challenger and challenged, judge, and "instruments," that is, arms, with which the parties strike one another. For just as in a trial one party convicts the other by means of witnesses, documents, and confessions ; De restit. spol., *cum ad sedem* ; so in a duel he convicts him by bodily arms ; and as in the trial one is convicted in the event of condemnation, so in like manner one is convicted in the duel. We must therefore examine this trial by duel, on the analogy of a contentious trial.

Whether an oath "de astu" should be taken in a duel, and by whom ?

[Ch. cxxxix.]

And first I ask whether an oath "de astu" should be taken, and whether by the challenger and the challenged, or by one of them, and by whom ? Now an oath "de astu" in this trial is the same thing as an oath "de calumnia" in a contentious trial in a civil or ecclesiastical court. And it appears that both should swear an oath. For the oath "de calumnia" is taken in a contentious trial by the plaintiff and the defendant ; C. De iur. calumn., l. i, and l. ii ; and Authent., the same title, *principales* ; Extra., the same title, throughout. So in like manner here, since there is the same reason, there is the same disposition of law ; ff. Ad leg. Aquil., l. *illud* ; C. Ad leg. Falc., the last law ; De constitut., *translato* ; and similar passages. Solution : There have been various opinions on this point, if we regard the Lombard law. One opinion, said to have been that of the Mantuans, was that in this trial by duel an oath "de astu" is taken by both parties, both plaintiff and defendant ; and according to them, all laws which speak of not taking the oath "de astu" are amended. They cite Lombarda, *Qualiter quis se defendat*, l. *mentio*. But that law has four possible meanings. One, that it refers to conflicting witnesses, that there should rather be a duel than they should perjure themselves. The second, that it refers to two persons claiming to be in possession, that they should fight a duel instead of giving up possession. The third, that it refers to one against whom an oath that he has committed theft has been taken, who wishes to swear the contrary. The fourth, when two persons are litigating before a judge, and one swears that he has taken an oath, and the other wishes to swear the contrary. Their view seems to be disapproved, because the law did not require an oath from the defendant, so that the plaintiff only takes an

oath ; Lombarda, *Qualiter quis se defendat*, l. *si quis alium astu*. There is an exception when a duel is fought because of a conflict of witnesses ; Lombarda, *De testi.*, the last law ; and *Qualiter quis se defendat*, l. *si quis cum alio*. A second opinion was that of Carolus Beneventanus, who wished to distinguish between one who comes to the duel in a cause entirely concerning himself, and one who comes in a cause directly concerning another, or concerning another primarily and himself only secondarily. In the first case, as when a man challenges another for theft or arson done to himself, or adultery with his wife, he says it is material to note whether the challenger says, "you have committed," or "I suspect that you have committed." In the first case, he ought to swear that the thing is so. In the second case, he ought to swear that he has a just suspicion ; and when he challenges on grounds of suspicion, he ought to adduce the reason of his suspicion ; for instance, that he saw the man speaking with his wife, and so on. But if a man challenges another to a duel in a cause which concerns another—that is, not for any wrong committed against himself, but for one against another, as when a man challenges on a charge of treason—then, when he comes forward as a witness, he ought to swear that the thing is so, just as a witness takes an oath ; *C. De testi.*, l. *iurisiurandi* ; *De testi.*, ch. *tuis*, and ch. *cum nuntius* ; and similar passages. And so he says that the defendant should swear that the thing is not so. This opinion, so far as it concerns the oath of the defendant, is disapproved, as I showed just now. A third opinion, said to have been that of the Papienses, was, that no oath should be taken by the defendant and the challenged, but only by the plaintiff. As to the plaintiff, this is proved by Lombarda, *Qualiter quis se defendat*, l. *si quis astu*. As to the defendant, it is proved thus : The defendant is bound to one of two things, either to fight, or, if he refuses, to be condemned. Therefore an oath on his part has no effect, and so should be omitted as superfluous ; *C. De appel.*, l. *ampliozem*, § *in refutatoriis* ; ff. *De procuratoribus*, l. *non cogendum*, § *Sabinus*. A fourth opinion, which was that of a certain Albertus, was that the plaintiff always takes an oath except on a charge of treason, and when witnesses are in conflict, and on a question of the investiture of an estate. As to the accused, he agrees with the others, except with the Papienses. And I believe it is true that the plaintiff takes an oath as a general rule, except in the cases above mentioned. And the reason is, that the defendant may be compelled to clear himself, although there is as yet no judgement against him ; but the laws indeed require that he should at least be "infamis," and then, if his proofs fail, he is liable to compurgation ; *De purgat. canon.*, throughout ; ii, q. iv, throughout ; *De accusat.*, *qualiter* ii, and this passage should be noted there. So, then, by the Lombard law, which permits a duel in the cases above enumerated, an oath, at least on the part of the plaintiff, should precede ; and the oath should conform to the terms of the challenge, so that, if the challenge asserts a fact, he should swear to a fact ; if a suspicion, he should swear to this, just as a difference is noted between an oath "de calumnia" and an oath "de

veritate," the one asserting belief, the other a fact, as Carolus pointed out. But as to the defendant, I can conceive no reason for an oath being necessary.

Whether when one party has a champion in the cases allowed by law, the other party may have one too ?

[Ch. clxxx.]

Secondly, I ask whether, if one of the parties has a champion, in the cases allowed by the Lombard law, which are eight in number, as I noted above, the other party may then have a champion too. Solution: There have been various opinions on this question. Some authorities say that he may. They cite Lombardá, *Qualiter quis se defendat*, l. *quicumque*. There is an exception in the case where a slave contends against his master. A second opinion was that the other party may not. The reason given is this: For the law allows a champion in three cases; therefore it refuses it in others; ff. De legi., l. *ius singulare*; ff. Ad municip., l. i; ff. Solut. matrim., l. *si cum dotem*; C. De procur., l. *maritus*; De translatione prælatorum, ch. *inter corporalia*; and similar passages. I think that here we must observe that this trial by duel differs from a contentious trial in this, that in a contentious trial a party is ordinarily represented by another, and for this reason the use of "procurators" was introduced; ff. De procurat., l. i, [and l.] § *usus*; but in a duel the party ordinarily appears in person, and in this a duel resembles a criminal trial, in which a "procurator" does not appear to plead the cause; ff. De public. iudic., the penultimate law, § *qui ad crimen*; and ff. De procurat., l. *servum quoque*, § *publice*; and De accusationibus, ch. *licet*, and ch. *veniens*. And the reason is, that sentence of condemnation cannot be pronounced on the procurator, because he is innocent; nor on the principal, because he is absent; ff. De pœnis, l. *absentem*. It is exactly the same in the duel; for duellists fight to overthrow one another, in order that the truth may be elicited by this mode of proof. And so, as a rule, a champion does not appear, except in the permitted cases. If, then, a case arises in which one party has the right to a champion, but the other has not, the former alone will have a champion. But if both parties have the right, they will both have champions, unless we are to say that in order to preserve equality on the two sides, wherever one is allowed a champion the other may have one too; C. De fruct. et lit. expensis, l. *terminato*; De mutuis petit., ch. i, and throughout the title; Sext, De regul. iur., rule *non licet*; and this latter view is more equitable; but the former, which observes the rigour of the law, is more correct.

How are champions to be given and assigned in cases where both parties are allowed them ?

[Ch. cxxxxi.]

Thirdly, I ask, How are champions to be given and assigned in cases where both parties are allowed them ? Solution : Here I observe that champions in a trial by duel are like advocates in a contentious court, and so I infer that, just as there ought to be an equal assignment of advocates in a contentious trial ; C. De postul., l. *providendum* ; so there ought to be an equal assignment of champions when both sides are allowed them. But when the principals fight, equality or inequality is not to be regarded, since they conduct their own case to an issue by their own bodily strength.

Whether any one may be allowed as a champion ?

[Ch. cxxxxii.]

Fourthly, I ask whether any one may be allowed as a champion. Solution : As was said above, a champion is here like an advocate ; and therefore, just as any one is admitted to plead, unless he is a prohibited person ; ff. De postul., l. i ; so any one is admitted to the office of champion, unless he is disqualified by law. But a thief is disqualified ; Lombarda, Qualiter quis se defendat, l. *si ut campionem*. And the reason is, because he is " infamis " ; ff. De furt., l. *non potest* ; and if he is defeated, it is presumed to be by reason of his own wrong-doing ; so, too, other persons convicted of grave crimes are disqualified for the same reason.

In whose election is the duel ?

[Ch. cxxxxiii.]

Fifthly, I ask, In whose election is the duel ? Solution : As a rule, it is in the election of the plaintiff, on the analogy of a contentious trial. See Lombarda, Qualiter quis se defendat, l. *si quis amodo*. There is an exception in a charge of treason, where the plaintiff may be compelled to fight ; and where one has used the expression " arga " ; Lombarda, De publicis criminibus, the last law ; and Lombarda, De iniur. mulier., l. ii.

How is the duel to be ordered ?

[Ch. cxxxxiv.]

Sixthly, I ask, how the duel ought to be ordered. Solution : The law does not ordain, but custom prescribes, that a small but ample place should be chosen, in the city or outside ; and this place should be enclosed with ropes,

so that, when the word is given, no one except the duellists may presume to enter, nor to make a disturbance, which might distract one of the parties. And the judge will be there, in a place whence he can see both combatants, and how one meets the other, in order that at the end he may pronounce whether one has been defeated in the duel.

With what arms should the duel be fought ?

[Ch. clxxxv.]

Seventhly, I ask with what arms the duel should be fought. Solution : The Lombard law allows shields and clubs ; Lombarda, De testi., l. *si quis cum altero* ; and Qualiter quis se defendat, l. *mentio* ; and these ought to be equal and presented by the judge.

Whether, if the arms or the club of one of the combatants are broken, or fall, others ought to be given him ?

[Ch. clxxxvi.]

Eighthly, I ask whether, if the arms or the club of one combatant are broken or fall, others ought to be given him. And it seems that they ought. For the text says that the fight is to be with clubs and shields ; Lombarda, Qualiter quis se defendat, l. *mentio* ; and Lombarda, De testi., l. *si quis cum altero* ; but if others should not be given him, it would not be with clubs. Therefore, &c. This is confirmed. For clubs in a duel are like witnesses and documents in a contentious trial ; but in a contentious court witnesses and documents may be produced again, if the testimony of some of them is lost before publication and the making up of the depositions ; Authent., De testi., § *si vero* ; De testi., *fraternitatis* ; and Clemen., the same title, *testibus*. Some authorities agree to this if the arms are broken, but not if they fall ; for then, they say, the mishap should be imputed to the luck of the party. Others say that in no case are fresh arms to be given, but that any mishap is a matter of luck. Others say that the matter depends on custom. I think that the second opinion is true ; that is to say, that other arms should not be given, whether the first set fall, or are broken, unless there is a custom which can operate to the contrary ; ff. De legi., l. *de quibus* ; C. Quæ sit long. consue., l. ii ; dist. xi, *consuetudinis* ; dist. i, *consuetudo*. And the reason is this : For in a duel, as I said at the beginning of the treatise, we sometimes ask for what is contrary to nature, namely, that the less strong and less active of the parties should defeat the stronger and more active ; and this sometimes happens by the intervention of chance. Therefore each of the combatants should be left to submit to the chances to which they have freely exposed themselves ; otherwise the character of the duel of compurgation would be lost. This is confirmed.

For if we should say that new arms should be given, when the old arms fall, then by the like reasoning we should say that a combatant who falls should be raised up, which is absurd. For by these chances it sometimes happens that the stronger is defeated, and herein the judgement of heaven is shown.

Which of the combatants ought to strike first ?

[Ch. clxxxvii.]

Ninthly, I ask, Who ought to strike first in a duel? And it seems that the challenger should; for this trial by duel is like a contentious trial, as I have often mentioned above. But in a contentious trial the plaintiff first delivers his "libel" to the defendant, and the defendant replies later; C. De lit. contestat., in Authent., *offeratur*; and De libel. oblatione, ch. i. Therefore, by parity of reasoning, the challenger will first strike the challenged. On the other side is the argument that greater favour is to be shown to the defendant; ff. De obl. et act., l. *Arrianus*; ff. De regul. iur., rule *favorabiliores*; Sext, the same title, rule *in pœnis*. Solution: I think the first view is true, notwithstanding the citations to the contrary, because those laws refer to the end of the trial, when there remains only the definitive judgement; because then it is true that the defendant should be favoured. But at the beginning the plaintiff is to be favoured; ff. De iudic., l. *si quis intentione ambigua*; and ff. De verb. obligationibus, l. *inter stipulantem*. Or we might say that no order is to be observed in this, but that the combatants should be allowed to anticipate one another, or even to strike at the same time.

Whether a duel not ended on the first day, may be ended on the following day ?

[Ch. clxxxviii.]

My tenth question is, whether, if a duel cannot be ended on the first day, it may be adjourned to the following day. Solution: I say that it may; for I say that it should be renewed until it is finished.

Whether one who fails in a duel is to be condemned to pay costs ?

[Ch. clxxxix.]

My eleventh question is, whether one who fails in a duel ought to be condemned to pay his adversary's costs. Solution: On the analogy of a contentious trial, in which the vanquished is condemned to pay the victor's costs; C. De iudiciis, l. *properandum*, § *sin autem*; C. De fruct. et lit. expens., l. *terminato*; De dolo et contum., ch. *finem*; De pœnis, ch. *calumniam*; so in the duel we might say, "victus victori," &c.

Whether, if the challenger fails in a duel, he is to be punished by the penalty of retaliation ?

[Ch. cxc.]

My twelfth question is, whether, if the challenger fails in a duel, he is to be punished by the penalty of retaliation. Solution : On the analogy of a criminal contentious trial, where the penalty of retaliation is imposed on the accuser if he fails; De accus., ch. *super his*; the same title, ch. *licet*; and C. De accusat., the last law; so in a duel, when it is fought for public vindication, to punish one who has made an accusation.

Whether one who has been challenged to a duel on account of an accusation, and has been defeated and condemned, may be charged with the same accusation in a contentious trial ?

[Ch. cxci.]

My thirteenth question is, whether one who has been challenged to a duel on account of an accusation, and has been defeated and condemned, may be charged with the same accusation in a contentious trial. Solution : It might be said that he may, since the civil law does not approve, but utterly disapproves, of the duel of compurgation ; C. book xi, De glad., the single law ; and so does the canon law ; De pugnans. in duello ; and De purg. vulg., throughout ; as I have often pointed out above, at the beginning of the treatise. This phrase, "disapproved by law," precludes juridical discussion, and therefore it is no objection to say that the wrongful act of a person is not to be enquired into more than once ; ff. Naut. caup. stabul., l. *licet*, at the end ; and De accusat., ch. *de his* ; because those laws refer to a case in which the former examination and discussion have been juridical, and so we may conclude that an acquittal by duel does not give rise to an "exceptio rei iudicatæ" against one who wishes to bring an accusation in a contentious trial. This is true, unless the custom of the district is to the contrary, so that the Lombard law, for instance, is to be observed, whose disposition I have followed herein ; and the solutions of the preceding questions are to be limited accordingly.

Whether one who challenges another to a duel on account of a public accusation, and withdraws from the duel, incurs the Turpilian penalty ?

[Ch. cxcii.]

My fourteenth question is, whether one who challenges another to a duel on account of a public accusation, and withdraws from the duel, incurs the Turpilian penalty. And it seems that he does, on the analogy of a criminal contentious trial ; ff. Ad Turpilianum, l. i, § *si quis autem*. Solution : At common law the question would not arise, since the common law disapproves of this mode of trial ; see above. But, according to the law which allows it,

we might say that on the same equitable grounds the man should be punished ; and I say that the matter is in the discretion of the judge, since the law is silent ; De offic. iudicis delegat., ch. *de causis*, at the end ; ff. De iur. delib., l. i. But I do not think he incurs the Turpilian penalty, since penalties are not to be enlarged ; ff. De lib. et posth., l. *cum quidam* ; and dist. i, De Pœnit., § *pœnæ* ; Sext, De reg. iuris, rule *in pœnis*. These conclusions, as I said, proceed from Lombard law. For, at common law, one who withdraws from a duel is not punished ; nay, he obeys the law in doing so, and breaks it if he goes on.

Whether one who challenges another to a duel by Lombard law may withdraw with the leave of the judge ?

[Ch. cxci.]

My fifteenth question is, whether one who challenges another to a duel by Lombard law may withdraw with the leave of the judge. It appears that he may, on the analogy of a prosecutor asking for discontinuance ; ff. Ad Turpil., l. *abolitio*, and l. *si quis interveniente*, and l. *Domitianus* ; C. De abolit., throughout. Solution : At common law this is clear, because he may withdraw without discontinuance, and he does right to do so. By Lombard law, too, I think that the judge may allow it for good reason, on the analogy of a prosecutor, quoted above.

Whether one who challenges another to a duel may withdraw without penalty before joinder of issue ? and also when should issue be said to be joined in a duel ?

[Ch. cxci.]

My sixteenth question is, whether one who challenges another to a duel may withdraw without penalty before joinder of issue ; and herein I also ask what is the point of time in a duel which corresponds to joinder of issue in a contentious trial. And it seems that he may withdraw before that time without penalty. For before joinder of issue one is not said to be "bringing an action," but to be "intending to bring an action" ; ff. Rat. rem haberi, l. *amplius*. Therefore, up to that time he may withdraw. This is confirmed. For before joinder of issue one who withdraws is excused ; ff. De in ius vocando, l. *quavis*. Therefore, &c. It is confirmed by C. De adulter., l. *sine metu* ; ff. the same title, l. *miles*, § *socer* ; and ff. Ad Turpilianum, l. *quæsitum*. In the opposite sense is ff. Ad Turpilianum, l. *in senatus*, § *qui post*, where the text proves that one who withdraws from an accusation before joinder of issue is liable to the Turpilian penalty. To the same effect is C. De calumniatoribus, the penultimate law. Solution : This question presupposes the decision of another question, namely, what is the point of time in this trial by duel which corresponds to joinder of issue. And it seems to be after one

blow of the plaintiff, and one of the defendant, because in a contentious trial issue is joined by the claim and the defence which follows it ; C. De iudiciis, l. *rem non novam*, § *patroni* ; C. De litis contestat., Authent., *offeratur* ; and Extra., the same title, the single chapter. But in a duel the first blow takes the place of the claim ; the second, which is by the defendant, is the defence ; and so issue is thus joined. I believe, however, that the true view is, that issue is joined when one party challenges, asserting that the other has committed the crime, and the other denies it. And it is obvious that this is the true view. For the oath "de calumnia" is taken after joinder of issue ; Authent., Vt litigantes iurent in exordio litis, at the beginning ; and C. De iureiurando propter calumniam, l. ii. But combatants in a duel take the oath "de astu" after this verbal challenge and contradiction, as I showed above. Therefore the duel begins with the verbal proclamation, but the blows correspond to the proofs by witnesses and documents, which come after joinder of issue ; Vt lite non contestata, throughout. And so we must modify the solution of the question in which I asked who should strike first. If we adopt this solution, the principal question becomes a question whether the Turpilian penalty applies before joinder of issue. And the glosses are conflicting. There is one, by Hugolinus, on ff. De adulteriis, l. *si miles*, § *socer*, which holds that it does not apply. There is another, by Azo, on C. Ad Turpilianum, l. i, which holds that it does ; and this I believe to be true, by ff. Ad Turpilianum, l. *in senatus*, § *qui post* ; and C. Quomodo et quando iudex, Authent., *qui semel*. Yet Petrus says that the accuser may change his mind up to the time when the defendant appears after citation ; he so understands ff. Ad Turpilianum, l. *quæsitum*. And in like manner we may reach a solution of the previous question, speaking of the Lombard law, as above. Thanks be to God.

End of the treatise on War, compiled by me, Giovanni da Legnano of Milan, least worthy of the doctors of canon and civil law, in the University of Bologna, in the year 1360, at a time when a strong army lay before the city, which furnished the cause of my treatise, that it might provide a matter of exercise for the students at that time, but be submitted to the correction of the doctors. Thanks be to God. Amen.

A TABLE OF THE TREATISE

[Ch. i.]

This treatise on War, in its first division, is divided into three principal parts, of which the last is divided into six treatises, and subdivided as will be made clear to you by the table below, which arranges its titles in their order.

First principal part.

What war is, and how it is to be described.

Second principal part.

[Ch. ii.]

Of the division of war and how it is to be divided.

The third and last principal part

gives the order of the treatises, and is divided into six principal treatises.

First treatise.

Of celestial spiritual war.

How celestial spiritual war is the mete and measure of human spiritual war.

Of the natural influence of the spiritual war of celestial bodies on terrestrial wars.

How, according to astrologers and natural philosophers, it is necessary to assume the existence of war.

Second treatise.

[Chs. iii-vi.]

Of human spiritual war, according to theology.

[Chs. vii, viii.]

Of human spiritual war, according to moral philosophy.

Third treatise.

[Ch. ix.]

Of universal corporeal war,
divided into six treatises

First treatise : On the law whereby it is introduced.

[Ch. x.]

How universal corporeal war had its origin in divine law.

[Ch. xi.]

How universal corporeal war had its origin in the law of nations.

Second treatise of the third principal treatise : On who may declare universal war.

[Chs. xii-xiv.]

Who first and chiefly may declare universal war, and by what law, and against whom ?

[Ch. xv.]

Whether war made by the Emperor against the Church is lawful, and whether subjects are bound to obey him therein ?

[Ch. xvi.]

What, on the other hand, is the law, when the Pope makes war against the Emperor ?

Third treatise of the third principal treatise : Of the means of making war.

[Ch. xvii.]

Of the legion and the cohort, and who and how many are required therein.

[Ch. xviii.]

How soldiers should conduct themselves in war, whom they should obey, and from what they are commanded to abstain.

[Ch. xix.]

What belongs to the office of a general in war ?

[Ch. xx.]

How soldiers are punished differently, according to their different offences.

[Ch. xxi.]

Of fortitude and its nature ; and when fortitude is to be called moral, and when not ; and when fortitude conducts war to a right end, and when not.

[Ch. xxii.]

Whether fortitude is a cardinal virtue ?

[Ch. xxiii.]

Why, and in what sense, the four principal virtues are called cardinal.
What is virtue ?

[Ch. xxiv.]

Of the threefold species of good, and how the four cardinal virtues are derived from the good.

[Chs. xxv, xxvi.]

How, and in what sense, a man may be called brave in war.

[Ch. xxvii.]

Which is the chief act of fortitude ?
How many kinds of fortitude are practised in war ?

[Ch. xxviii.]

Whether a brave man in war ought to await death rather than to flee ?

[Ch. xxix.]

Whether a soldier should be punished with death, who bravely charges the enemy with his company, and utterly routs them, contrary to the commands of the general ?

[Ch. xxx.]

Whether quarter should be granted to the general of a war, when captured by the enemy ?

Fourth treatise of the third principal treatise, divided into two principal parts.

First part: Who are bound to participate in a war?

[Ch. xxxi.]

Whether vassals are bound to participate in a war at their own expense when a lawful war is begun by their lord ?

[Ch. xxxii.]

Whether the subjects of a baron, who begins a war against his king, are bound to help the baron against the king ?

[Ch. xxxiii.]

Whether subjects are bound to help first a baron who begins a war against another baron, or the king who begins a war against another king, both commands being received at the same time ?

[Ch. xxxiv.]

Whether the non-liege vassal of two lords is bound to help both, or one, and if so, which ?

[Ch. xxxv.]

Whether a vassal is bound to help his lord against his father, or a father against his son ?

Whether a citizen of two states is bound to help one against the other ?

[Ch. xxxvi.]

Whether a vassal summoned by his lord is bound to follow him in parts beyond the sea, to fight against barbarians ?

[Ch. xxxvii.]

Whether slaves are bound to follow their lord to war everywhere ?

[Ch. xxxviii.]

Whether freedmen, when summoned, are bound to follow their patron to war ?

[Ch. xxxix.]

Whether cultivators, when summoned, are bound to follow their lord to war ?

[Ch. xl.]

Whether a lord may summon those who are allied or leagued with him to help him in war ?

[Ch. xli.]

Whether those who are subjects by reason of jurisdiction only are bound to participate in war ?

*Second part : Of persons not bound to participate in war, who do so voluntarily ;
divided into six principal parts.*

First part : Of those who participate voluntarily.

[Ch. xlii.]

Whether those who voluntarily participate place him in whose service they go under an obligation to themselves, if they incur loss thereby ?

[Ch. xliii.]

Whether a borrower is liable to the lender to replace horses and arms lost in war ?

[Ch. xliv.]

Whether a hirer is liable to a letter to replace horses and arms lost in war ?

[Ch. xlv.]

Whether, if one man summons another to a war, and the other is robbed on his way to the war, the summoner can sue the robber by the " actio vi bonorum raptorum," or the action of theft ?

[Ch. xlii.]

Whether those who are not summoned, but participate in a war of their own motion, place him in whose service they go under an obligation to themselves ?

[Ch. xlvii.]

Whether those who are not summoned, but participate in a war of their own motion, and make an effective start, place the person in whose service they go under an obligation to themselves, though he objects to and forbids their going ?

Second part : Of those who participate because they are bound to return a service.

[Ch. xlviii.]

Whether such a person has an action against the person whom he helps ?

Third part : Of those who participate for the sake of winning glory.

[Ch. xlix.]

Whether such persons place the person to whose assistance they go under an obligation to themselves ?

Fourth part : Of those who participate because they let out their services.

[Ch. l.]

Whether such persons have an action against their hirers ?

Fifth part : Of those who participate with the intention of getting booty.

[Ch. li.]

Whether an action is competent to such persons ?

Sixth part.

[Ch. lii.]

Whether clerks may participate in a war ?

Whether mercenaries enlisted in Germany at a fixed salary by one who hires them, have an action against one who, while they are on the way, has absolutely lost his status ?

[Ch. liii.]

Whether mercenaries enlisted in Germany by an Italian city, at a fixed salary yearly, may bring an action for their whole salary, or for a rateable part, or for what, if the city is seized by a tyrant, while they are on the way to it ?

[Ch. liv.]

Whether mercenaries ought to be paid at the beginning of a month, or at the end ?

[Ch. lv.]

Whether mercenaries who absent themselves, even with the licence of their lord, for a time, lose their salary for that time ?

[Ch. lvi.]

Whether, if mercenaries wilfully refuse to serve the whole time of their engagement, they lose their pay for the whole time, or only for the time which they have not served ?

[Ch. lvii.]

Whether mercenaries may serve by a substitute ?

[Ch. lviii.]

Whether a mercenary loses his pay during the time when he is ill ?

Fifth treatise of the third principal treatise : Of spoils and captives made in war.

[Ch. lix.]

Whether one who makes a capture in war, becomes owner of the person or thing captured, and whether the doctrine of " postliminium " applies ?

[Ch. lx.]

Whether persons captured in a war between two states become slaves, and whether ownership is acquired over them ?

[Ch. lxi.]

Whether things captured in war become the property of the captors ?

[Ch. lxii.]

Whether the use of trickery is allowed in wars ?

[Ch. lxiii.]

[*Desunt verba* : Whether it is lawful to make war on feast days ?]

[Ch. lxiv.]

Whether one who has recovered in a war the whole of his loss, may still bring an action against his adversary, or again declare war against him ?

[Ch. lxv.]

Whether those who die in war are saved ?

[Ch. lxvi.]

Whether it is lawful to wage corporeal war on behalf of the property and possessions of the Church, and for this purpose to assemble troops ?

[Ch. lxvii.]

Whether bishops may go to war without the licence of the Pope ?

[Ch. lxviii.]

Whether prelates are bound to pay tribute for the temporalities which they hold from the Emperor, for wars declared by him ?

[Ch. lxix.]

Whether mercy should be shown to persons captured in a lawful war ?

[Ch. lxx.]

Whether the Church should declare war on the Jews ?

[Ch. lxxi.]

Whether those who follow a war, but cannot fight, enjoy the immunities of combatants ?

[Ch. lxxii.]

Whether prelates may declare wars, and take part in them, and encourage others to war, by reason of their temporal jurisdiction ?

[Ch. lxxiii.]

Whether a prelate may declare war for an injury done to his subject, which is unpunished, and capture persons other than the wrong-doers ?

[Ch. lxxiv.]

Whether the Pope's delegate may declare war ; that is to say, invoke the secular arm ?

[Ch. lxxv.]

Whether wars declared by the Church against excommunicated persons are meritorious ?

Sixth and last treatise of the third principal treatise, in the form of a table : On how many are the kinds of corporeal wars which are recognized in law.

[Ch. lxxvi.]

Fourth treatise of the third principal part : Of particular war which is waged in self-defence, divided into eight principal parts.

[Ch. lxxvii.]

First part.

[Ch. lxxviii.]

What is particular war ?

Second part.

[Ch. lxxix.]

How many are the kinds of particular war ?

Third part.

[Ch. lxxx.]

By what law particular war was introduced.

Fourth part :

[Ch. lxxxi.]

Who may declare this particular war ?

[Ch. lxxxii.]

Whether clerks may declare this war ?

[Ch. lxxxiii.]

Whether, since a clerk may defend himself, even by killing another, he may do this in a church ?

[Ch. lxxxiv.]

Whether a clerk, attacked in the act of celebration, may defend himself, and kill his assailant, and so continue to celebrate the office ?

[Ch. lxxxv.]

Whether one who is attacked while baptizing, anointing, confirming, ordaining, or celebrating the several sacraments may postpone their celebration, though begun ?

[Ch. lxxxvi.]

Which is to be preferred, the death of a priest who is attacked while he is baptizing a child at the point of death, or the eternal life of the child, lest he should die without baptism ?

[Ch. lxxxvii.]

Whether a monk may defend himself without the licence of his abbot ?

[Ch. lxxxvii *bis*.]

Whether a slave may defend himself without the command of his master ?

[Ch. lxxxviii.]

Whether persons outlawed, who may sometimes by municipal laws be killed with impunity, may defend themselves ?

*Fifth part :**Against whom may this particular war be declared ?*

[Ch. lxxxix.]

Is it lawful against a superior ?

[Ch. xc.]

Is it lawful against a judge, even if he acts unjustly ?

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[Ch. xci.]

Is it lawful for a son against a father ?

[Ch. xcii.]

Is it lawful for a monk against an abbot ?

[Ch. xciii.]

Is it lawful for a slave against a master ?

*Sixth part :**For what causes is it lawful to declare this particular war ?
divided into two principal parts.*

[Ch. xciv.]

First part : On behalf of what persons is it lawful ?

[Ch. xcv.]

Is it lawful for a father on behalf of his son ?

[Ch. xcvi.]

For a husband on behalf of his wife ?

[Ch. xcvi.]

On behalf of a brother, sister, and other relations ?

[Ch. xcvi.]

Whether a man is bound to defend another against being killed by a third ?

[Ch. xcix.]

Whether a vassal is bound to help his lord ?

[Ch. c.]

Whether a slave is bound to defend his master ?

[Ch. ci.]

Whether a soldier is bound to defend his officer ?

[Ch. cii.]

If a vassal sees his lord attacked on one side, and his father on the other, each being equally in mortal danger unless he is helped, and the vassal can only help one of them—the question is, Whom should he help ?

[Ch. ciii.]

The same subject continued : What is the law if a clerk sees his bishop violently attacked on one side, and his father on the other, each being equally in mortal danger unless he is helped, and the clerk is able to help only one of them—the question is, Whom should he help ?

Second part : For what things is it lawful ?

[Ch. civ.]

Whether it is lawful in defence of things lawfully possessed ?

[Ch. cv.]

In defence of things unlawfully possessed ?

[Ch. cvi.]

Whether one who has a right to defend property, and defends it within the limits of justifiable defence, incurs irregularity, if he kills or wounds another ?

[Ch. cvii.]

Whether a man incurs excommunication by laying hands on a clerk, in defending his own property ?

[Ch. cviii.]

Whether one may summon one's friends to help in defending one's property ?

[Ch. cix.]

Whether, in defending property, one may repel force with force against all those against whom one may use force in defending persons ?

[Ch. cx.]

Whether one may repel force with force in defending things deposited or lent ?

Seventh part :

How may this particular war be declared ?

[Ch. cxi.]

Whether it is lawful within the " limits of justifiable defence " ?

What are the " limits of justifiable defence," and what is required therein ?

[Ch. cxii.]

Whether a poor and feeble man may defend himself with a sword, against a strong and vigorous man who strikes him only with the fist ?

[Ch. cxiii.]

If a man may defend himself "incontinenti," in what sense is the phrase "incontinenti" to be understood?

[Ch. cxiv.]

What is the meaning of "equivalence in the act of violence itself"?

[Ch. cxv.]

Am I deemed to have acted vindictively, and not defensively, if I have expelled my despoiler from my possession, when he first offered to give security for the restoration of possession?

[Ch. cxvi.]

Whether I ought to await one who is prepared to strike me, or to anticipate him?

[Ch. cxvii.]

Whether a soldier, attacked by his neighbour, is deemed to repel force with force, if he waits for him, and strikes him, although he might run away?

[Ch. cxviii.]

If a wounded man, after the wounds have been inflicted, pursues his assailant, and strikes him, which is not lawful, should he be punished as "malicious," or as "culpable"?

[Ch. cxix.]

Whether violence to the person may be repelled by friends, like violence to things?

[Ch. cxx.]

Whether a slave is to be excused, who kills his master's wife on the order of his master?

Eighth and last part of the fourth treatise of the third principal part.

[Ch. cxxi.]

What is the end of particular war?

Fifth treatise of the third principal part,

[Ch. cxxii.]

Of particular war waged in defence of the mystical body, which is called "Reprisals,"

and this treatise is divided, in its first division, into two principal parts.

[Ch. cxxiii.]

The First part sets out whence, and in what, reprisals had their origin.

[Ch. cxxiv.]

*Second part : Of the causes of reprisals. Of the productive or efficient cause of reprisals.**Third part : Of the material cause, divided into four principal parts.**First part : Of the " matter in which."*

[Ch. cxxv.]

What is the " matter in which " ?

What is the " matter about which " ?

What is the " matter against which " ?

What is the " matter from which " ?

To what persons is the power of taking reprisals to be granted ?

Are reprisals to be granted to residents ?

[Ch. cxxvi.]

Whether reprisals should be declared for citizens who are not subject to the jurisdiction of a state, and are otherwise not part of it ?

[Ch. cxxvii.]

Whether reprisals should be granted to a citizen " by convention," against the state of his origin ?

[Ch. cxxviii.]

Whether limited reprisals should be granted to citizens, and to those who are regarded as citizens ?

[Ch. cxxix.]

Whether a state may grant reprisals to the citizens of another state, who by agreement or statute are treated as its own citizens ?

Second part : Of the " matter about which."

[Ch. cxxx.]

Whether reprisals can be declared against the property of those whose persons cannot be seized on the strength of reprisals ?

[Ch. cxxxi.]

Whether reprisals, simply declared, can be executed against property in the territory of the state against which they are declared, so that it may be seized and brought within the territory of the state declaring them ?

[Ch. cxxxii.]

Whether, if one state declares reprisals against another, the ruler of the state declaring them, on writing to the ruler of the state against which they are declared, can execute the reprisals on property there situated ?

Third part : Of the " matter against which."

[Ch. cxxxiii.]

Whether, if one state has declared reprisals against the men of another state, they can be executed against residents of that state ?

[Ch. cxxxiv.]

Whether, if one state has declared reprisals against the men of another state, they can be executed against men of that state living elsewhere ?

[Ch. cxxxv.]

Whether reprisals can be executed against the citizens or residents of a state, who are subject to its burdens, but are also citizens of another state ?

[Ch. cxxxvi.]

Whether reprisals can be executed against women^o ?

[Ch. cxxxvii.]

Whether reprisals can be executed against unmarried clerks, and also whether they can be executed against married clerks ?

Whether, when a bishop neglects to do justice on his clerks, and recourse cannot be had to his superior, reprisals can be declared against the same clerks by a secular judge ?

[Ch. cxxxviii.]

Whether reprisals can be executed against Bolognese students, or even against other students of Bologna, on their way to Padua for study ?

[Ch. cxxxix.]

Whether reprisals can be executed against ambassadors ?

[Ch. cxl.]

Whether reprisals can be executed against those who are going to a festival, to the Church of St. James, or to other place of indulgence ; also whether they can be executed against those at sea, and against those who cannot be summoned into court, and in many other cases ?

[Ch. cxli.]

Whether reprisals can be granted against a Bolognese magistrate of Milan, who does injustice there ?

[Ch. cxlii.]

Whether reprisals can be declared against the officials of a magistrate or ruler who does injustice ?

[Ch. cxliii.]

Whether reprisals can be declared against the consuls and the leaders of a state who refuse to do justice ?

[Ch. cxliv.]

Whether reprisals can be declared against private persons, who are absolutely innocent, because of an offence of their lord, or of another private person, for which justice is not done ?

[Ch. cxlv.]

Whether reprisals can be declared against persons who are partially, but not fully, subject to a state ?

[Ch. cxlvi.]

Whether reprisals can be declared against a certain class of persons who refuse to do justice ?

[Ch. cxlvii.]

Fourth part : Of the " matter from which," which arises from a failure of jurisdiction, because a judge ought first to be appealed to, before reprisals are granted.

[Ch. cxlviii.]

Whether a judge ought to be required to do justice, before reprisals are granted ?

[Ch. cxlix.]

Whether, when a man who suffers an injury dares not litigate in the state of the person inflicting the injury, his own judge may write, asking to have the jurisdiction transferred to others, or arbitrators chosen ?

[Ch. cl.]

What judge ought to be required to do justice ?

[Ch. cli.]

What degree of injustice is required, before reprisals will be granted ?

[Ch. clii.]

When is it to be said that resort to a superior is impossible, so that an occasion arises for the declaration of reprisals ?

Fourth principal part : Of the formal cause, divided into two principal parts.

[Ch. cliii.]

First part : Of the form of declaring reprisals.

[Ch. cliv.]

Who may appear, to oppose the declaration of reprisals ?

[Chs. clv, clvi.]

How the commission of injustice, or the denial of justice is to be proved

[Ch. clvii.]

Whether, if property is seized on the strength of reprisals, it may be detained, by virtue either of the first decree, or of the second ?

Second part : Of the form of executing reprisals.

[Ch. clviii.]

Whether one to whom reprisals are granted may execute them on his own authority, or by the servants of the magistrate granting them ?

[Ch. clix.]

Whether one who seizes persons and property is bound to present them to the judge, or may retain them for himself ?

[Ch. clx.]

Whether property seized on the strength of reprisals should be sold, or whether it should be accepted in payment, or be valued ?

[Ch. clxi.]

Whether a declaration of reprisals can be executed on holidays ?

[Ch. clxii.]

If a man wishes to defend himself, or property seized, what jurisdiction should be invoked ?

[Ch. clxiii.]

Whether the person from whom the exaction is made has a remedy against the person for whose debt or wrong it is made ?

[Ch. clxiv.]

Whether the person from whom the exaction is made has a remedy against the ruler, as well as against the principal debtor ?

[Ch. clxv.]

Whether a person seized on the strength of reprisals may, on his own authority, seize persons belonging to the state in which he was seized ?

[Ch. clxvi.]

Whether reprisals can be granted by statutes, in cases not permitted by law ?

Whether a statute of a state, which ordains that a son is liable for the wrong of his father, can be executed against a son living outside the territory of that state ?

[Ch. clxvii.]

Whether it may lawfully be agreed that one person is to be liable for another ?

Sixth and last Treatise of the third principal part of this work : Of " Particular " war waged for compurgation, which is called " the Duel ", divided, in its first division, into seven principal parts.

[Ch. clxviii.]

First part.

[Ch. clxix.]

What is a duel ?

Second part : How many kinds of duel are there ?

[Ch. clxx.]

How a duel is fought for exaggeration of hatred.

How a duel is fought to win public glory.

How a duel is fought for the compurgation of an accusation.

Third part : By what law is the duel permitted, and by what forbidden ?

[Ch. clxxi.]

How the duel which is fought for exaggeration of hatred is introduced by natural law, in the sense of an instinct of nature, proceeding from sensuality towards some desired object.

[Ch. clxxii.]

How the duel which is fought for exaggeration of hatred is forbidden by natural law, in the sense of rational intelligence, and so by the law of nations, and by divine law, canon law, and civil law.

[Ch. clxxiii.]

How the duel which is fought for the sake of glory is introduced by natural law, in the sense of an instinct of nature proceeding from sensuality.

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[Ch. clxxiv.]

How the duel which is fought for the sake of glory is forbidden by divine law.

How the duel which is fought for the sake of glory is forbidden by the law of nations.

How the duel which is fought for the sake of glory is forbidden by canon and civil law.

Fourth part : For what reason is the duel of compurgation permitted, and for what is it forbidden ?

[Ch. clxxv.]

How the duel of compurgation is forbidden by divine law.

How the duel of compurgation is forbidden by the law of nations.

How the duel of compurgation is forbidden by canon law.

How the duel of compurgation is forbidden by civil law, as a general rule.

Fifth part : In what cases is the duel of compurgation permitted ?

[Ch. clxxvi.]

How the Lombard law permits the duel of compurgation in twenty cases.

Sixth part : Between whom may a duel be fought ?

[Ch. clxxvii.]

How the duel of compurgation should generally be fought between principals.

Seventh and last part : How is a duel to be fought ?

[Ch. clxxviii.]

How the duel of compurgation is modelled on a contentious trial.

[Ch. clxxix.]

Whether an oath " de astu " should be taken in a duel, and by whom ?

[Ch. clxxx.]

Whether, when one party has a champion in the cases allowed by law, the other party may have one too ?

[Ch. clxxxi.]

How are champions to be given and assigned in cases where both parties are allowed them ?

[Ch. clxxxii.]

Whether any one may be allowed as a champion ?

[Ch. clxxxiii.]

In whose election is the duel ?

[Ch. clxxxiv.]

How is the duel to be ordered ?

[Ch. clxxxv.]

With what arms should the duel be fought ?

[Ch. clxxxvi.]

Whether, if the arms or the club of one of the combatants are broken, or fall, others ought to be given him ?

[Ch. clxxxvii.]

Which of the combatants ought to strike first ?

[Ch. clxxxviii.]

Whether a duel not ended on the first day may be ended on the following day ?

[Ch. clxxxix.]

Whether one who fails in a duel is to be condemned to pay costs ?

[Ch. cxc.]

Whether, if the challenger fails in a duel, he is to be punished by the penalty of retaliation ?

[Ch. cxci.]

Whether one who has been challenged to a duel on account of an accusation, and has been defeated and condemned, may be charged with the same accusation in a contentious trial ?

[Ch. excii.]

Whether one who challenges another to a duel on account of a public accusation, and withdraws from the duel, incurs the Turpilian penalty ?

[Ch. cxiii.]

Whether one who challenges another to a duel by Lombard law may withdraw with the leave of the judge ?

[Ch. cxiv.]

Whether one who challenges another to a duel may withdraw without penalty before joinder of issue ? Also whether, and when, issue should be said to be joined in a duel ?

End of the Table to the book of the treatise on War of Giovanni da Legnano. Thanks be to God. Amen. Amen. Amen.

TRACTATUS
De Bello, De Represaliis et De Duello
Domini Iohannis de Lignano,
cum additionibus Domini Pauli de Lignano

Impressus Bononiae, ad instantiam Sigismundi de libris, per me
magistrum Henricum de Colonia, xvi die Kal. Ian., Anno
a Domini incarnatione millesimo quadringentesimo
septuagesimo septimo.
Laus Deo

(See the Editor's Prefatory Note which follows)

PREFATORY NOTE

THE pages which follow are a reproduction by the Oxford University Press of Giov. da Legnano's work, as first printed, in 1477, with many omissions and interpolations due to its editor, Paolo Antonio da Legnano, great-grandson of the author.

The original is included in a rare volume, having no general title-page, for the loan of which I was indebted to All Souls College, containing eighteen legal treatises, dating from 1477 to 1493, by various authors. The first of these treatises, printed at Milan in 1483 by Elldericus Sinzenzeler, is headed by the words: "Clarissimi iurisconsulti D. Lanfranchi de Orianio solennis utilis quotidianus et practicabilis tractatus de Arbitris. Additis multis aliis questionibus clarissimorum doctorum."

T. E. H.

Tractatus de bello. de Repressaliis ⁊ de
Ducto domini Johannis de Lignano cui ad
ditionibus domini Pauli de Lignano.

PROBENDUM.

EX YSRAEL MOL-
TIBUS HABITUM
ET INGRESSUS
EST BELLUM ⁊.

In regem xxii. c. ysaie.
est solium domini. Et ut

scribitur ysaie. in cap. vocabunt ysaie lo-
liam domini. ⁊ hoc est patrimonium sancte.
Romane ecclesie cuius caput est yersusalem
id est alia Civitas Bononie que vere vo-
cari potest yersusalem. Nam in ipsa quorum-
cunq; scilicet maxime iuris dilucidata est
veritas. De hoc scribitur zacharie viii. c. no-
cabitur yersusalem Civitas veritatis. hoc for-
mosa sicut yersalem anti. vi. ca. de hac eti-
am clamat propheta isai. lca. scrutator ye-
rusalem in luce ⁊ actus v. ca. repleti yersa-
lalem doctrina nostra. Et de hac etiam scribitur
apoca. xxi. c. mdi Civitatem sanctam ye-
rusalem ⁊ ibidem xxi. ostendit mihi civitatem
sanctam yersalem descendente de celo. l. bo-
nomiam ⁊ vere de celo descendit cum ibi fons
veritatis iuris que adeo per ora principum
promulgatur viii. di. quo iure. C. de lon. tēp.
prescrip. l. penulti. de hac scribit apus ad e-
bacos xii. c. Civitatem dei amictis. yersalē ce-
lestem. Et idem apus ad gala. iiii. c. Que aut
sursum ē yersusalem libera est. de hac etiam scri-
bitur palpo vi. ca. Elegi yersalem ut ibi so-
ret nomen meum. verum etiam penitente altis-
simo ⁊ superius disponentibus corporib; hec
civitas Bononie ut yersalem ad extremum
mutata est ⁊ de nascita ⁊ propter in habitum
tium delicta in universa odia mutua domini
cominatus est altissimus ipius detractionem
ut scribitur iudici xix. c. delbo yersalem
sicut deleri solent tabule de insidiis in habitum
tium scribitur xxi. palpo. xrv. c. descende-
runt insidie in yersalem ⁊ ppter superbiam
in habitantium cominatus est per prophetas
dicente cōputescere faciem superbiam iuda.
⁊ superbiam yersalem multā pere. xiii. ca.
Et propter hoc clamat propheta propter in-
habitantes dicens dabo yersalem maternos
barene ⁊ alibi propter hoc clamat propheta
dicens ponam yersalem quasi acervum lapidum
mihic. i. ca. Et propter hoc clamat propheta
contra nutrices in. ca. dicens cōstratis ye-
rusalem nutricem vestram. barath. quarto.
Et ppter hoc si inhabitantii excessus facti
est ut exercitus babilonie regnum obsideret
yersalem pere. xxii. c. ⁊ p hoc factū est qd
scribitur ezechielis v. c. ⁊ est yersalem in medio
gentium. l. hostium pene tamen factum est ⁊
etiam quod scribit teneoz. l. c. facta ē yersa-
lalem sicut palata. Alia igitur Civitas Bo-

nie vere yersalē nuncupatur ⁊ caput solii. i.
primorū scē. Rōe eccle. Rex aut acta reges
⁊ gubernans est reuerendissimus in cristo p-
⁊ dñs. dominus egidius misericordie divina
Sabine. epus. hic ē mutavit habitum ⁊ in-
gressus est bellum. Nam de trona pacifico. l.
sacratissime collegio Cardinalium ⁊ o latere
extro sanctissimo pape Innoc. vi. destinatus
est ad recuperationem yersalem. l. patrimonii
penitus deperditi ⁊ in ipsius recuperatione
mutavit habitum. Nam relicta pōtēti calli gete i
gressus est bellum ⁊ bellum forte ut princeps
strēmūssimus. Nam ante ipsum non erat
rex in yersalem ut scribit. xxii. c. In dieb;
illius non erat rex ⁊ ppter dñm dñs ad cui
l. dñm Egidium misi te regem sup populum
dñm. Iudic. ix. c. Et ipse dicere pōt. Ele-
git me dñs ut essem rex pmo p alio. xxviii.
c. Et iste rex surrexit de solo dñi. Jo. iiii. c.
Et bene ingressus est bellum ⁊ feliciter. Nam
ut alit. dupl. l. hinc prudentie ⁊ fortitudinis
indice oia lura sacre sancte ecclesie Romane
tirānde usurpare de nibilo pduxit ad esse o
tenebris ad lucem ut dici possit qd de nibilo
aliquid fecerat gen. i. ca. ⁊ l. unicus in prin. C.
de rei iuro. act. Clere igit ⁊ Rex ysaie mu-
tauit habitum ⁊ ingressus est bellum. Quia
igit rex ysaie. l. patrimonii ⁊ que sit ut. 3.
dictum est de extremo ad extremū deduc.
ta mutavit habitum ⁊ ingressus est bellum ⁊
hec diebus nostris ymmo ut pendet satis ut
dei incōgruum hec sub silentio penitus ptra-
lire. Idcirco ego Johannes de Lignano de Bo-
nomia mīm? iter ceteros iuris dñm doc-
tōes ad uos pstatum dñs meum dñs egidium
o albornocio o citate pcessi mīratōe dñi epus
Sabine. in partibus ytale pō sancta rōn
ecclesie vicarium generalem ⁊ verum regem
yersalem transmittendo cōcepi tractatum
facere de iersalem ⁊ de civitate Bononie.
⁊ de illo quod mutatio est ingressus hoc or-
dine. nam de civitate Bononie ponay lex cau-
sas implicantes que acriter contingerunt di-
ctam civitatem. Al. Mille. ccc. l. usq; ad
Mille. ccc. lx. maxime que insurrexit domi-
nil mutatio. ⁊ cā quorumcunq; tēporum ⁊ o
spectibus annorum contra merides dñm
quibus hec contigerunt nō autem bonorum.
⁊ hec appono. qd in aliquibus tractatibus in-
tēdo iuris metas excedere. explicādo aliquas
que forte eveniunt ⁊ cuilibet causē sub mate-
ria unum tractatum ad plures ut occurrēt
aliquos tractatus transibo sub filitio aliquos
explicādo. unum soli nunc publicabo inde.
licet tractatum de bello promittens domino
inveniente singulos tradere explicatos tempo-
re cōgruo ⁊ causa cessante ibidionia. Sup-
plicans eidem reuerendissimo. p. ut imbecil-
litatem intellectus supportare dignetur. ⁊
hoc ut mollicum suscipe exordium corrigē-
di si placuerit ⁊ reformandum iuxta gētilia
sapientie auctorem. Exiguum munus ⁊ In

pondera cum panis meus Bono. vocat yeru-
salem q̄ yersalem hic capitur pro ciuitate
sed esto nō infans q̄ per quatuor sensus siue
intellectus sacra scriptura exponitur p̄ hi-
storicam per quē res ad litteram gesta reci-
tatur per allegoricam per quam alius ab alio
sumitur intellectus per tropologicam et mo-
ralem per quam mores oriantur per anagogi-
cam ab una quod est furiam per quē celestis
ascendimus. yersalem ergo secundum histori-
am est ciuitas ut in hoc tractatu sapitur le-
cidam allegoricam scripturam. sancta eccle-
sia denotatur secundum tropologiam signifi-
cat quilibet fidelem sicut secundum anago-
gicam significat curiam celestem. hoc voluit
hosti. Jo. an. et d. ant. in. c. i. in. §. i. de sacra
unctione et de singulis ibi allegantur iura ul-
de glo. in. ca. schismum lxxvi. di. et glo. in. c.
nonne xxxvii. di. Tu pondera nimirum
si poemus meus dicit q̄ Bono. descendit de
celo cum bononie docentur iura que a deo p̄
bona principum promulgantur. Nam iustitiae
spiritus sancti inuenerunt canones. ca. mo-
latores xxv. q. i. c. fl. ca. q. et c. c. si quis di-
acomus. l. di. et in ca. si ille. di. per d. abb. in
c. in ciuitate de iur. cum leges que appel-
lantur sacratissime ibi manifestentur. l. leges
C. de legibus. et sacratissime sunt. l. i. ff. de na-
ris et exordi. p̄m. et bononie nota reddant
iura per quorum interpretationem mandata
illuminantur et ad obediendum deo et eius mi-
nistis uita subditorum informantur ut i au-
ten. bita. C. ne filius pro patre et per abb. in
c. fl. in si. bononie etiam dona dei scilicet ut
legantur leges que sunt dona dei ut nota in
l. i. ff. de legib. et per abb. post doc. in. c. quia
de magistris in. d. c. ille nos de pigno. Nam
etiam bononie manifestantur et declarantur
mandata diuina. c. de quibdam xxxvii. di.
possimus per herculem alle. de legali sciētia
illud quod per ciceronem scribitur sua i os-
tione pro solo licio archia. poeta. Nam ce-
tere res neq̄ temporum sunt. neq̄ etati om-
nium. neq̄ locorum hec studia adolescentia
agunt senectuteq̄ oblectant proprias res os-
nant aduersis profugam atq̄ solacium pre-
bent delectant domi. non impediunt foras
pernoctant nobiscum. peregrinantur. rusti-
cantur.

Capitulum primum.

Tractatu belli sic procedam.
primo ponam descriptionem bel-
li humani deorsum principaliter trac-
tatus in genere. Secundo diuidā bellum
per membra. Tercio prolequar singula mem-
bra. Bellum sic describitur. Bellum est cō-
tēptio exorta ppter aliqd̄ dissoni appetitui
humano ppositi ad dissonātiā excludēdā tēdēs
dixi contentio hoc ponit ut genus Nam et
sub se continet et bellicam cōtētiōnē et alias
quascūq̄ ut. l. i. ff. de aq̄. plu. arcen

dixi ppter dissonum et est causa unde oritur
contentio dixi appetitui humano ad triam bru-
torū dixi ad dissonantiam et. et ista est causa
finalis cuiuslibet belli. Nam quilibet belli ten-
dentialiter ad tollendam displicentiam qua
fuit belli introductoria et sic fuit bella ppter
pacem. xxiii. q. i. noli. Ultum riu soluat
pauis meus cum nemo docetum qd̄ sit belli
nullus fuerit diffinire tamē bal. i. l. unica. C.
de cadu. tollen. dicit q̄ bellum est peditio ale
et corporis allegat glo. in. l. i. C. ut publice leti-
tie li. xii. sed hec ista potius sonat in effectū
belli q̄ in diffinitionem belli. Tu pondera q̄
bellum possit sic diffiniri non tamen specto
diffinitōe paui mei bellum est quedā animi
generositas orta ad iniuriam p̄pulsandā uel
ad uindictam inferendam ar. lxx. xxiii. q.
i. in fima. In quo autē pauis meus dicit
q̄ sunt ppter pacem bella adde Tullium de
officiis l. i. p̄dicatū quare suscipiēda bella
sunt eodem ob eam cām ut sine iniuria i pace
uiuant.

Cap. ii.

Secundo bellum sic diuidit bellū
aliud spiale aliud t̄pale. Spiale
aliud celeste aliud humanum Spi-
rituale celeste est id quo habet Job. xiii. hu-
manum est de quo scribit ad rom. vii. Ibi ut
di aliam legem repugnantem legi mētis mee
vi. d. i. c. testamentum. Corpale aliud est
uniuersale aliud p̄ticulare de uniuersali habe-
tur. ff. de capri. et postil. rēnerf q̄ p totum et
xxiii. q. i. et xxii. Particulare aliud est ob
tutelam corporis sui et rēp̄ et de hoc habet. ff.
de ui. et ar. l. i. §. vii. vi. ff. ad. l. aq̄. l. i.
sciam. §. qui cum aliter et. l. i. C. unde vi. et
c. olim de resti. spolia. et in clem. si furiosus et
homicid. Aliud sit ob tutelam corporis mi-
stici uel eius p̄tis ppter defectum iurisdic-
tiois que rēpnaliter nuncupant de quo in aut.
ut non sunt pignorationes et de iur. c. i. li.
vi. Aliud sit ppter contumaciam resisten-
tium iurisdictioni iudicis de quo in. l. q̄ resti-
tuere. ff. de rei ven. Aliud sit ppter pur-
gationem quod duellum appellat de quo. C.
de gladiatoribus. l. vita li. xi. et pugnatib.
in duello p totum ritulum. Ulex est quod
posset diuidi prima diuisio p iustum et iniustum
Sed in his modicum insistendum et singula
membra singl̄ sunt explicanda ex ordine suo
Et primo de bello celestiali celesti breuissime
illud explicabo et sic de singulis. Tracta-
bo igitur primo de bello spiali celesti. Se-
cundo de spiritali celesti humano. Tercio de
corpali uniuersali. Quarto de p̄ticulari qd̄
sit ob tutelam corporis sui. Quinto de p̄ticulari
quod sit ob defensionem mistici corporis qd̄ rēpn
salutē nuncupat. Sexto de particulari quod
sit ad purgationem quod duellum nuncupat
Pondera diuisionem belli non specto diuisiōe
paui mei quam oīo necessarius est leg ppter

vilerat bella. Primi erat romani. Secundi ordinem tractat. tamen hosti dicebat quod in hac die Tertii presumptuosum. Quartum li-
citum Quintum temerarium. Sextum volutarium. Septimum necessarium quod sequitur Jo. an. in. c. l. de bonis. li. vi. Hosti. hanc divisionem posuit in summa de treuga et pace. §. quid sit iustum. d. abb. et modernum in. c. sicut et. j. de iure iurum. sequitur hosti. subdit tamen abb. quod posset dici quod bellum quoddam est proprium quoddam impropium declarans ibi aliquid sic bellum proprium et impropium. De di-
visione belli vide in summa glo. xli. q. ii. vide tractatum. j. in. c. lxxvi.

Cap. iii.

Edicendo ad singula dico quod celeste bellum insurrexit propter ingratitudinem surgentem propter defectum fictionis caritatis impie a creatore in luciferum cuius intelligentia inter ceteros subtilissimos creati. Et hinc non congruit descriptio superius data. ubi sciendum quod ut inquit Gregorius in moralibus. ab initio creati omnis angelice nature altissimus enim creator creavit luciferum ceteris angelicis intelligentis eminentior. Nam ipse premitur non fuerunt inferiores ceteris scilicet in paradiso dei ut scribitur ezechielis si abietes plantavit si equarunt similitudinem nec frondibus eius. Nam ipse speciosus factus in multis conditis frondibus dicitur quod prelatum ceteris legio nibus tanta illum spiritus pulchritudo quanta et supposita angelorum multitudo decoravit. Iste arbor in paradiso dei tot quasi ceden-
los frondes habuit quot sub se positas supernorum spirituum legiones attendunt. hic fuit signaculum dei fuit iste sic creatus ceteris eminentior sicut et cetera foramina habuit preparata ad caritatem suscipiendam. Nam hic a principio conditionis sue capax caritatis est conditus quasi repleri voluisset statibus angelis tanquam in regno positus ornamento lapidum potuisset inherere. sed caritatem propter superbiam non assumpsit. Si enim caritati suo penetrabili se prebuerit sanctis angelis sociatus in ornamento regio lapidis fixus mansisset. habuit ergo foramina. sed superbie uicio caritatis suo non sunt repleta. Quia iste ceteris eminentior fuit ut signaculi similitudinis dei creatus. nec caritate propter superbiam uicium repleri voluit. Idcirco peccatus sine uenia dampnatus. quia magnus. sine compensatione dampnatus fuit. Idcirco propter hoc de paradiso electus ut prolixius et pulcherrime uideri possit in. c. principium eius. de pent. di. li. et fuit gregori ut dixi. Et hoc fuit spiritale celeste bellum. Circa quod ut prius pari insisteret. Tamen quia dixi ipsum ceteris eminentior. Est attendendum quod quedam sunt collata angelis in principio creationis sue ceteris sed differe-

reter quedam indifferenter sed ceteris. Ceteris sed differe faciant nature sine substantie Subtilitas Intelligentia Prospectus Liber arbitrii habilitas. Hec tamen differunt. Nam quidam sunt in substantia subtiliores quidam in intelligentia perspicaciores quidam liberi arbitrii habiliores. Collata autem ceteris sed indifferenter fuerunt spiritualitas indissolubilitas indissolubilitas immortalitas. In his omnia purificantur. Et per hoc intelliges in quibus lucifer fuit eminentior quia in collata ceteris sed differe. Est etiam attendendum quod diabolus fuit exaltatus per naturalem progressionem quod qua dictum est Exaltatus est etiam propter uictoriam quam habet contra hominem aliquando in bello quod gerit contra ipsum unde scribitur exaltasti dexteram tuam cum uictoriam tuam dauid dicebat. Illumina oculos meos ne unquam obdormiam in morte nequid dicat inimicus meus paulum aduersus eum. Exaltatus est etiam propter sapientiam unde dicitur. Tunc est electus. Eleuatum est cor tuum in decore tuo cum ipse dixit. Ascendam in celum et ponam thronum meum ad aglonem et ero similis altissimo. ysaie. xlii. c. Tu potes quod diabolus sua sapientia electus est de celo. Nam per suam conditionem minime sed per suam uoluntatem factus est malus ut in. c. q. epus xlii. di. et sic non debuit excusari cum liberum habuit arbitrium et hodie etiam habet sed ad modum tantum sicut angeli habent ad bonum tantum sed uolens ad bonum et ad malum ut nota in dicto. c. qui epus uide doc. et maxime minimum abb. in. c. l. de summa trinit. et fide co. et ibi in. c. l. dicitur quod demones bene a deo creati erant boni sed ipsi per se facti sunt mali. Homo uero diaboli suggestionem peccauit. Et pondera etiam quod diabolus non fuit electus a beatitudine tantum quam tunc habebat et ab illa fuit etiam electus ad quam habendam erat creatus. c. x. bis omnibus. xxvii. q. ii. Homo enim qui est inter cetera animalia sime imbecillitatis indicium scire nihil sine doctrina non sari non ingredi non uesti. Breuiter nihil aliud a natura conlegit quod flere et ut quasi finem bonum contempnere uideat atque altissimi distat hodie qua pena eius puniatur. sapientia diaboli penam cognoscendo qui sua sapientia a curia est expulsus celesti et pen. di. li. i. c. quod ergo

Capitulum lii.

De igitur fuit spirituale bellum in quo electus fuit lucifer de paradiso altissimi. et forte ex illo ortum habuit spirituale humanum. nam in uno quocumque genere est decendere ad unum quod sit primum et mensura eorum que sunt in comuni genere. In genere igitur repugnantie bonum contra malum est decendere ad primum. Primum sunt principia. principium autem malorum est princeps et diabolus. ipsorum ergo

pugna est primum et mensura cuiuslibet inferioris pugne spiritalis humane. Dondra quod verum est quod predicat: primum meo ymno etiam in presenti vita longe infra continuum nobis inferunt bellum in .c. spiritus sanctus de consecra. di. Unde scribitur in .c. l. ii. q. vii. quod diaboli bona sepius solent conuertere in malum et in electis maculam ponere. nam cessant quippe querere quos ex fidelibus perdant et maxime illos quos ardentiores in seruitio dei adfuit ut in .c. nulli diaboli. iii. q. i. et ipse sathanas transfiguravit se et angelum lucis ut homines decipiat ut in .c. e. piscopi xxvi. q. v. habet enim mille modos nocendi quibus etiam utitur. causis. xii. q. ii. diabolus enim latine eminator fuit pater mendacii quia mendacium dixit nequaquam morie. nui sed eris sicut dii scilicet bonum et malum habetur in veteri testamento in genesi. i. doc. c. dampnamus de summa trinit. et maxime abb. in penit. col. glo. in .c. i. q. i. in euangelio loquitur mendacium ex se loquitur. quod mendax est et pater mendacii. Nam et diabolus laudet hominem et semper eum decipere nititur secundum dominum abb. in .c. ii. ne de uel. mo. fuit enim principi nostre future dampnationis nisi per lignum liberati fuisset. Nam diabolus dicitur homo ab euentu quia deuicit hominem secundum glo. in .c. ii. de e. lec. nam verum est uicisse hominem sed per altissimi sanguinem fuisse recuperatum cui la plenti dubium. sed sua superbia uicit etiam se ipsum. quod fuit a paradiso electus cum suis angelis. fuit equidem electa decima angelorum pars ut no. xvi. q. i. in .ca. de hinc enim que a paradiso exules in eternum quia legatur in hunc sine uenia dampnatus. de penit. di. ii. in .c. principium sua tamen sagacitate sua solertia suis insidiis multi laqueatur hoc in teterrimo mundo. Et testor dei ego Paulus de lignano quod cuperem dissolui et esse cum christo ut doctos cemit gentium.

Capitulum .v.

Et forte rationabiliter loquendo bella corporalia terrestria habet bella celestia correspondentia.

Nam dicit pbi. necesse est hunc mundi contiguum esse superioribus latronibus ut omnis uirtus inde regatur primo metrorum et secundum celi. et mundi omnis igitur actus inferiorum corporum dirigitur a superioribus celestibus. et ibi est pugna. i. repugnancia uirtualis. Insurgens propter diuersitatem corporum celestium et maxime planetarum apud cuncta operantur quod fixe et diuersitatem aspectuum fixi et motum eorum quibus forte attentis. non foret bene possibile mundum esse sine bello. et forte si esset peccatum secundum sententias naturalium et astrologorum tenere mundum non posse diuurnari sine bello et cum sola pace quod sic ap

te possit demonstrari.

Capitulum .vi.

Oratio causa sufficientibus et necessariis necesse est potius ipsi effectui. Sed belli ponantur cause sufficientes necessario producantur ergo necesse est ponere ipsum bellum propter maiorem. Nam effectus alicuius causae suam quoad esse producantur et destructum. i. q. vii. q. p. remedio. l. q. i. q. p. necessitate. l. q. di. p. r. l. c. ii. q. i. q. detrabe de baptismo debitum propter maiorem. Nam sua sententia naturalium impossibile est celum stare propter vii. et vii. ymno ipsius motus propter et coram celestia ex sua natura operantur in hoc inferiora effectus repugnantes et excessus repugnantia insurgit hic inferas propter uarietatem aspectuum corporum celestium et motuum ipsorum quod per ex sententia. Nam stricte in proposito deducendo propter uariam correspondentiam corporum celestium esse constructio chaitatum sunt repte diuersitates naturaliter se odio habentes et sic amice et sic genologie sic et particulares homines quod se naturaliter odio habent non precedentibus uero meritis hic inde sic et naturaliter se diligentes. Cum igitur bella oriantur propter odia et dissonantias appetituum hoc autem necessario producantur motibus corporum celestium que semper et necessario operantur inter bella fore uero necessario accedat necessitate naturalis et corpore nature fateor tamen quod potentia rationalis non necessitat directo et per se ymno resistere possit hinc est quod dicit potentiam in libro centum uerborum Anima sapiens dominabitur astris quod est ille regulariter et laudabimus eum quod testes tamen si theologi secus sentiant me subicere in omnibus que eos contingit eorum correcti oni. De hoc tamen bello nihil intendo tractare quia nimis foret meas metas excedere Causa autem theologie propter quas non est pars universalis in obo lex solent reddi. Prima quia non puniunt maleficia ecclesiastici. ii. c. Secunda habundantia reze ipsam genef. xiii. c. facta est rixa inter pastores Abraham et pastores Loth. Tertia quia non occupamus in pugna contra demonem id non pugnamus ut homines ysaie. xxvii. c. p. uellimus eum morte et in inferno ad ephecos. iii. Non est consilium aduersus carnem. Quarta quia non consideramus dampna guerre in qua perdimus animam et corpus et diuitias. yere. lvi. c. Quanto quia non consideramus euentum belli qui est dubius. ii. regum. xli. c. Sexta quia non seruamus precepta dei. yere. iii. c. utina attendis mandata mea. tc. Ex predictis igitur inter duplex spirituale bellum celeste primum creatoris contra luciferum ipsam propter uero sectam caritatis in supbia elatum penitus de trono celesti ad centum terre. Et illud fuit de quo Job. xlii. c. ubi super uirtualis repugnancia

corporum motui et aspectui celestium introducere
toris formalis repugnantie inbec inferiores.
propter quod introducuntur inferiores bella et
hoc et continuatur et succedunt a prima theologie
et loquendo. Et ab hoc procedit et dependet
spirituale bellum et humanum quod peruenit
ex repugnantia intellectus ad sensum. Nam
princeps malorum persequitur et inducit ad vi-
cium ut emergat ad Ro. princeps autem bono-
rum e contra ut ad superna eleuetur. a secundo
autem dependet bellum corporale humanum
materialiter loquendo ut. 3. proximo tracta-
tu discutitur. Potest quilibet mediocri-
ter prudens cognoscere prorsum meum omne
scientias peruenisse ut suis apparet in operibus
ideo in 4. et 6. ca. transito simpliciter cum est
doctrina legitur in historiis quod cum quintus
motus scolarum nates legum de iure poetorio
consultabatur ad furium et caledum qui huic
scientie dediti erant consultores reiecerant
inde cum hic prorsus excedit iure metas ad
eam maiorem meam me remitto. Sed dum
allegat sex causas propter quas accidit bellum
dicas hoc voluisse glo. Jo. an. in. ca. apostoli-
ce de re iudi. li. vi.

Capitulum vii.

Etiam spirituale bellum potest
explicari theologie et moraliter.
Theologie est contentio
ex orta propter invidiam et repugnantiam di-
aboli contra rationabilem creaturam habens
fomitam a peccato primi parentis. Et de
hoc bello spirituali loquitur apostolus ad Ro. vii.
ca. sic inquiens induit nos armatura dei ut
ut possitis stare adversus insidias diaboli.
Et illa armatura sunt virtutes et bona opera
quibus homines armantur contra insidias
sui. qui resistit. Insidie autem diaboli sunt in-
numerabiles. Quam loquitur Iohannes Baptista ha-
bet enim mille nocendi modos nec ignotam
astutiam eius. Conatur namque a principio ru-
ine fac unitatem celestem rescindere carita-
tem vulnerare sanctorum operum dulcedinem
invidet sibi miscere ne fierent. et omnibus mo-
dis humanum genus pervertere ac per turba-
re solet enim scientie et eradicat caritates
quas in celo nequit habere homines constan-
tes ex luti materia in terra tenere. Unde o-
portet quod quatenus fragilitati conceditur ut
omnes audiat nostrum nocendie? versucie mu-
nimus ne mors ingreditur per portas no-
stras. Nec habentur xvi. q. si. nullo. Et alibi
pulcherrime scribit yere. ad Iohannem sic in-
quies. Sic in aliis atque peccatis semina no-
stra sunt intentus et peritio diaboli. Cum
vident nos supra fundamentum edificasse levis
stipula ligna. tunc supponit incendiam edificii
camus ergo murum argenti lapides preciosos
et temptare non audebit quisque in hoc certe
non sit locum possessio. Sedet quippe leo in i

sidio ut in occultis interficiat innocentem
et male figali probat fornax. homines autem
lustos temptatio tribulationis. Nec
sunt transumpta de pe. di. li. capitulo. si enim
circa medium. Alibi etiam scribit alexander
papa in hoc libro. Nam diabolus non cessat cir-
cuire querens quem teneat et querens quos
ex fidelibus pdat et maxime illos quos arde-
tiores in furio salvatoris eius familiares in-
venit. Nec sunt transumpta in. q. l. nulli. et
5. v. m. origenis in. xl. xxviii. ca. Et habuit
hoc peccatum fomitam a peccato primi parentis
non autem a causa positiva sed ut a causa li-
ne qua aliter esse non potuisset. Nam si non
fuisset peccatum primi parentis ad nihil fuisset
hec pugna. Dic ut dixi sup. in. iii. c. Et app-
bo diffinitionem belli secundum theologos hic relatus
per primum meum.

Ca. vii.

Qualiter autem intelligendum
et secundum sententiam philosophorum loquendo
spirituale humanum bellum est con-
tentio exorta propter repugnantiam rationis ad
sensum appetituum ubi sciendum quod secundum philosophum
sunt de anima. Anima habet quatuor potentias. scilicet
vegetativam sensitivam appetitivam intellec-
tivam et secundum locum motivam. Appetitum
dividit in sensitivum et rationabilem. Idem philosophus
primo politicorum dicit quod anima dividitur in
principatu dispositivo in ordine ad suum. scilicet
autem sensum suum. Intellectus autem dividitur in
principatu regali. scilicet in ordine ad liberos hoc
est dicere quod anima dividitur in corpus et sicut
suum intellectus autem dividitur in sensum sicut superior
cum subdito liberos. Ulterius attendendum
quod intellectus dicitur rationalis non quia in seipso
habeat rationem quia sunt potentie distincte for-
maliter sed dicitur rationalis non quia in seipso ha-
beat rationem quia sunt potentie distincte forma-
liter sed dicitur rationalis quia in homine est aptus
natus obedire rationi irrationalis quia potest
non obedire rationi vel ponit exclusionem rationis
formaliter. De his similibus evidenter apparet
quod appetitus sensitivus humanus aliquando obedi-
t rationi Aliquando obedi-
t rationi ubi obedi-
t est bellum
et repugnantia ubi obedi-
t est pax et concordia.
Et exemplum patet in magno mundo ubi omnia in
seriosa sunt apta nata obedire superioribus latio-
nibus ut eis virtus inde regat. Et cum aliquando
non obediunt propter dispositionem materie et
inde sunt aliquando propter intentionem agentium
superiorum ut monstra. Sic sensitivus appe-
titus ut inferior est aptus obedire hic est quod
dicit philosophus si anima tractata de motu et ma-
nente si intellectus moueat appetitum seu sci-
entiam et ipse eidem obediat motus est naturalis
et si ipsa superior moueat inferiorem. Sin-
autem e contra motus tunc non est naturalis
et si ipsa inferior moueat inferiorem. Exempla
patet in membris civilibus. Nam aliquando sunt

subditi repugnantes principibus suis. exempli
bulas repugnantie coll' r incontinente. Nam
in incontinente appetitus sensitivus inclinat
in excessum utpote in ordinatum cibum po-
tam vel aliquid simile. Ratio dictat illud fu-
giendum ut uocini r incontinente vincit i
tellectus. r ratio r proprie continentia non
est virtus moralis formata. nam ut iquit idē
pbis in uirtuoso anima consonat. unde cum
ex multis r frequentibus actibus in appeti-
tu sensitivo firmata fuerit promptitudo que-
dam inclinans ipsam appetitum sensitivum in
bonum r conformiter rōi tunc proprie ē vir-
tus. In incontinente autē patens est hec
repugnantia. sed ibi vincit appetitus sensiti-
vus nec illa dicitur uicium firmatum donec
ex frequentibus actibus in tārum assueverit
inclinare bellum spirituale humanum loquē-
do moraliter. De repugnantia etiam lo-
quitur ap'us ad roma. vii. uideo alium. l. repug-
nantem legi mentis mee transumpte xxxii.
q. vi. sed pensandum de consti. nam cōcupis-
centiam r de hoc spirituali bello loquitur gre-
gorius xxi. q. i. nisi bello. In hac autē re-
pugnantia ab adolescentie reguli est inclina-
tio in malum. Nam omnis etas ab adolescen-
tia prona est in malum genesis viii. ca. xii. q.
i. omnis etas. Et ratio conficitur multiplex
assignari. Prima q' malus pōt quis per se bo-
num autem supe gratia. Alia est propter somi-
tem originalis peccati impellētem ad malum
Alia q' facilius ad malum bonum. Nam con-
sistit in medio essentialiter. uicia autem i ex-
trematibus. ad medium aut trāsitur unica
uia. Ad extremum autem multiplex. Alia q'
plura sunt impedimēta boni q' mali. Alia q'
non sit bonum nisi cū iudicio ratiōis. q' ado-
lescentes parum valent propter offuscationē
organorum corporalium. Et credo ueriores
rationem. Hec de bello spirituali qd' circa
plura possit tractari. sed pretermitto q' trās-
cenderent metas iuris in quibus minus quā
possibile sit intendo dicere. Transeo cū
proptuo meo r rationes que hic allegantur
per eū quare adolescentia sit magis prona ad
malum q' ad bonum allegat etiā proptuo me-
us in probe. cl. in. ii. dum glo. ibi dicit q' per
sensualitatem appetimus delectabilia corpori
r fugimus nocia. r ponit etiam proptuo me-
us in pbe. gregorio.

Capit' ix.

Ercio tractaturus sum de bello
uniuersali corporali. r ipsius trac-
tatum explicabo p qōnes. primo
quo nū' ortū r inductum sit bellū. Secundo
quibus liceat indicare uniuersale bellū. sub
iungendo contra quos. Tercio que sint aggre-
gātia belli explicando p modi siue act' lici-
tos r illicitos psonari bellū aggregātū. Et
formando quādam qōes circa ipsa. Quarto

que sint plone que accedere possint ad bellū
Et quid ē accidētibus non strictis. Quinto
de his spoliis que sunt in bello r aliis gub'ndā
que in bello sunt. Sexto p modum tabule
p instructōe canonice de questionib' con-
tingentibus materiam belli ubi cūq' in corpe
iuris canōici tractatum fuerit p glo. r doc.
remittent. Opere precii est ut sequamur
diuisionem belli uniuersalis corporalis traditā
p paucum meum hic q' chus ordinē leg bēus

Ca. x.

Edeo ad primum. Et primo q'ro
quo iure ortum habuit bellū uni-
uersale. Solo iur' diuino r iur'
gentium diuino ut pbat Jo. viii. primo regi
vi. c. iur' gentiū. ff. de insti. r iur. l. ex hoc
iure. Dixi q' bella orta sunt iure diuino
ubi sciendum est q' bella nedum dīo pmitte-
re ymmo positue concedentem introduce
sunt r hoc demonstrari potest. Nam omnis
facultas tendens in bonum a deo positue ne-
dum pmissue deriuat. Sed facultas belli in-
ducendi iusti tendit ad boni ergo a deo posi-
tue puenit pbat maior. Nam omne datum
optimum r omne donum pfectum defursum
est descendens a patre luminum. Jaco. i. l. q.
i. q' pie. Probat minor. Nam inductio bel-
li iusti r bellum iustum tendit ad bonum. Nā
tendit ad pacem r quietem uniuersi hoc p-
bat auctoritate August. ad Bonifacium sic
inquiens. Non enim bellum querit ut bel-
lum exerceat sed bellum querit ut pax q'rat
r subdit Esto ergo bellando pacificus ut eos
quos expugnas ad pacis utilitatem vincēdo
pducas. Hec habet. xxi. q. i. noli. Est igit
finis belli pax r tranquillitas uniuersi ergo in-
ferunt adeo originaliter r positue puenisse.
Confirmat nam omnis actus punitiu' malo-
rum a deo puenit. Sed inductio belli iusti ē
punitiuus maloz r rebellium ergo a deo po-
situe puenit. Probat maior. Nam scribit
mibi uindictam r ego retribuam puer. xxi.
r. xxi. q. i. Item cum in puerbis r alibi
mea ē uicio r ego retribuā deutrono. xxvii.
c. ad hebre. x. ad ro. xiii. c. Probat minor
aut. Augustini in smone de puero cēturiōis
xxiii. q. i. parat' q' non cōmipiēdo ymmo p
hanc inductionem concludi poss' theologicē
de necessario in uniuerso fore malos r rebel-
les. Nam maiestati diuine iniquit act' p-
miatiui bonoz r punitiui maloz ut scribit
Intellectu bonum. rē. Tunc illo pmissio
posset sic induci posito actu necessario ponit
obiectum terminationis illius actus hoc pba-
tur p vba philosophi li. ii. de anima. Nam
posito actu uisionis ponit obiectum uisibile.
Item r actu audicionis posito ponit obiectū
audibile posito ergo a principio creatōis mi-
di actu punitiuo in deo necessario ponit ob-
iectū punitibile r tale est mali ut. d. dictū est

Confirmat primum principale. Nam omnis actus per quem tollit nocendi facultas a deo positus puenit. Sed inductio belli iusti est huiusmodi. probatur hec aut. aug. sic inquit. bella geruntur ut ad pietatis iusticie societatem vicinis consolatur. Subdit. nam cum licentia iniquitatis capitur. utilis vincitur quoniam nihil est felicias felicitate peccantium quod penalis nutritur impunitas et mala voluitas velut interiores hostis roboratur. Hec habent xxiii. q. i. v. et. per hoc. Confirmatur omnis potestas est a deo iubente vel permittente. Ergo potestas bellica sic provenit sed non solum permittente. sed iubente ergo iubente. probatur principaliter ad rom. xiii. transp. tione xxiii. q. i. quid culpatur. Quid plura nam ut hoc patet inspectis mundi generationibus. Nam a principio creationis mundi plaga ad tempora noce deus per seipsum et sine ministro malos malos exterminabat ut patz de chayn et lamech et quibuldam aliis regibus ut scribitur gene. iiii. xxviii. ca. per se ergo bella induxit punitura et malorum exterminatio. Inferitur ergo expensis bello iure divino iudicta originaliter figuratiter. ymmo forte demonstrari posset. Nam inquit naturalis hoc est parvus mundus et sic fit gubernatio in quo mundo sic in toto universo similitudine tracta. ut inquit phi. viii. phi. et in regione naturalis corporis humani constat quod ubi nullus est humorum excessus nulla est rebellio et pugna conservatori naturali. ubi aut humorum excessus propter inordinatam regionem tunc pugna nature tendentis in conservationem contra excessum tendentem in destructionem et in pugna. aliquando sufficit naturalis potentia ad correctionem repugnantie. aliquando est impotens propter excessus morbi et tunc est opus extrinseco remedio. utpote medicamine sapiente naturam veneni repugnantia cum morbo. Sic indirecte in magno mundo. Nam aliquando in regione et plaga mundi nullus est rebellum excessus et tunc nulla pugna ymmo uniformiter tendit ipsius gubernatrix natura in conservationem Aliquando est excessus rebellum tendentis in destructionem gubernationis et conservationis et aliis placationibus et tunc non est opus bello nec medicale venenose. Aliqui in tantum excessus morbus quod opus est medicale venenose penitus materia morbi extirpante Et tale medicamen est bellum eradicatorium et exterminatorium malorum. Dic igitur in quo mundo recurrit propter defectum virtutis inferioris ad medicum qui equipat remedio extrinseco et venenoso. Sic in magno mundo gubernator generalis qui est altissimus creator et est medicus universi tendens in ipsius conservationem et gubernationem cum intantum excreverunt humores tendentes in destructionem universi vel potius eiusdem. Iulcia excessiva et ulterius importabilia respectu conservationis

monarchie mundane utique remedio bellico ut exterminet vicia et excessus ut discrosia reducat ad terminos temperamenti. Et sicut in corpore humano isti humorum excessus sunt circa membra singula corporis humani et etiam discrosia insurgit aliquando propter humores viciat excessum quicquid alterius. Sic in universo singulas regiones et mundi plagas que sunt membra magni mundi sunt his vicioz excessus que repugnant ipsius gubernationi et aliqui in uno aliqui in alio fin vicioz varietates et sic contingit plagas mundi infirmari propter vicioz excessus que quicquid sic excedit quod opus est medicamine eradicatorio quo eradicabunt aliquando boni cum malis sicut medicina euellit etiam mixtum bonos cum malis ymmo propter dictum excessum penitus extinguit ut mors contingit etiam in singularibus suppositis quod patet ex sensatis nam regiones infinite propter hoc sunt penitus extincte et inhabitabiles redditae. Infinita possent recitari exempla Hoc idem contingit in genealogia et in regiminibus que etiam minui ut penitus deficiant. Et licet hec sint dicta sic figurat tamen textibus legis divine optissime demonstrant. Nam ut legitur gene. xix. c. propter excessum morbi sodomie deus usus est medicamine bellico et eradicatorio contra Sodomam. Sodom. Segar. et Eleale. licet hoc perirent propter vicinitatem ut de pe. d. l. s. sed continuo et. c. c. c. de exced. prela. et in ait. ut non luxurient contra naturam circa il. coll. vii. Possent induci tandem exempla de isto etiam medicamine bellico. Josue. viii. c. Nam ibi deus noster iubet ad Ierem noua ut constituat sibi retrosum insidias et insidiantes bellatores ad insidiandum hostibus Et August. in libro quonum super vbi Josue. Iusta autem bella distingi solent que viciniae iniurias et delictorum excessus. Et subdit ge. vel chitas plectenda est que vel vindicare neglexerit quod a suis improbe factum est. Subdit et hoc gen. belli sine dubio iustum est quod imperat qui novit quod cuique fieri debeat. non dicit permittit ymmo imperat. Subdit in quo bello dux exercitus vel ipse populus non tam actor belli quam minister dei iudicandus est Et sic clare demonstratur deum et medicum altissimum conservatorem universi bella impare et eradicat. Hoc habentur transp. ta xxiii. q. i. dominus noster. De hoc et bello et medicamine eradicatorio scribitur in chabeorum v. ca. et dextrono. cap. ii. ubi ex mandato dei filii israel bella gesserunt contra amezos quod etiam tractat aug. in libro mu. Et habetur transumptum xxii. q. ii. ca. notandum. Sane de hoc etiam scribitur in dicum v. ca. ubi elegit dominus nova bella loquitur de his erradicantibus viciorum excessus. Scribitur etiam psal. cxxx. et bellis propriis expugnabat loquitur de his eradicatoribus Scribitur etiam in Machabeis iii. ca. c. d.

fortissimi et bellatores. Scribitur etiam per
xx. ca. dominus est mecum tanquam bellator. pe
ramie super sobriam pulcherrime hec scri
bit dicens si quis fortitudinem latronis ut pir
rate enumerat et infirmos prodest illis sua i
firmitas debilitate enim membra quibus non
bene mēbeantur a malo opere cessabunt. Cō
clusio est ieronimi quod sonant uiciorum si cernat
moribus quo membra infecta in malum dispo
bantur et hoc sit bello eradicatio. Hec ha
bentur xxiii. q. iii. ca. si quis fortitudo hinc hec
aperte demonstratur luce vii. ad ebreos xii.
dicit et dominus seruus qui nescit uoluntatem
domini sui facit digna plagis uapulabit pan
cia. Seruus autem qui scit uoluntatem domi
ni sui et non facit digna plagis uapulabit. Ex
cedens igitur recipit plagas a domino. hec
sunt transumpta xxii. q. v. ca. uindicta.
Hic legitur quod deus multos affecerit morte
propter manu et igne diuinitas impetrato illi
regum. i. ca. et c. uindicta ubi uidetur xxiii. q. v.
Sic scribitur de aliis tempore ueteris legis
iiii. regum xviii. et xviii. ca. Sic scribitur
quod uerbum petri apostolorum principis ananias
et uxor eius tradiderunt actui iiii. ca. trans
umptiue habetur xvii. q. i. ananias xviii. q.
v. ca. uindicta in fine. De hoc bello eradica
tione pulchre loquitur gregorius ad arumicli
dam francorum reginam sic inquiens ne si quod
non credimus diuine uiciorum iracundia se
leratorum sine actione commota belli pestis
terminat quos delinquentes ad rectitudinis
uiam dei precepta non renouant xxii. q. v.
si quos inquit nonne dominus ad moysen ma
leficos non peccatis uiuere exodi. xxii. Moyses
etiam qui legem acceperat a domino cal
tores idoli dolore puniri ut exodi. xxii. ca.
Samuel etiam mandato domini agne reges
pinguissimum in frustra confudit et regum.
xv. ca. transumpta habentur xxii. q. v. §.
hinc apparet. Dominus etiam egiptios flucti
bus submersit exodi. xiii. ca. Israelitarum
caduera prostrauit in heremo. nume. xiiii. c.
transumpta habentur xxiii. q. v. quid ergo
Infinita possunt super hoc demonstrando in
duci exempla ueteris et noue legis diuine.
Sed hec sufficit ut ex his enumeratis suf
ficiat concludere bella originaliter ortus ha
buisse ex iure diuino et non solum dei peni
sione ymmortaliue ab ipso mundi guber
nator et medico uiciorum eradicatio propter
salutem mundi conseruationem. Et cum in
hunc finem tendunt bellica remedia ut supra
clare dictum est. Propter hanc autem de
traham et uiciorum multiplicatum excessus
in uniuersi destructionem progredientes ex
sensatis apparet altissimum creatorem tempo
ribus retro actis et hoc eradicatio remedio
usum fuisse. Nam regna et mundi regimi
na quam plura penitus enervata ut quam
plura remissa quid de Trojanorum assensu
quid de grecorum impio Quid de romanorum

uincio domino partes Itale temporibus
nostris febriunt et subiciunt examini medi
cine parat alicubi minoribus alicui cradica
tione exercitates ad finem quorum habitudi
nes sunt fallaces iuxta doctrinam pitissimi
ypocratis et amporisimorum hanc regionem de
duxit ad motum ut altissimus congruam ad
bibat medicinam ut cuius humores in quato
et qualia temperamento plus cum qui ex pleni
tudine fuerit euacuatio sanet iuxta doctrinam
eiusdem. Hec autem conclusio uidelicet quod
bella pueniant a deo potissime et originaliter
demonstrari posset atento diuine maiestatis
uniformi et perpetuo ministerio. Nam altissi
mus omnium creator mediante celesti machi
na in hanc terrestrem machinam naturaliter
operatur sed supernaturaliter immediate ubi uult spi
rat et influat sed naturaliter loquor dictum
pitissimi philosophi Primo mechanice et fo celi. ne
cesse est hunc mundum contiguum esse supio
ribus rationibus ut omnis virtus inde regatur.
Insunt altissimus naturalis in hec inferiores
mediate celesti et spiritus corpe. Illud autem
totum corpus operatur mediante motu et lumine
ut inquit idem philosophus. Et quia in ipsa tota
machina celesti sunt partes diuersarum virtutum
influyendo ut puta sepatim uarietates stellarum
errantium et fixarum diuersitas a quibus propter
uarietatem naturarum et motuum dependet
effectus omne genitum et corruptibile. Idcirco
quibus contrarietas et naturarum diuer
sitas et repugnantia hic inferius insurgens
pendens est desuper. Ex quo statim infera
tur quod cum repugnantia et dissimilitudo sunt
ordinatoria bellorum seu introductoria quod bella
inde oriuntur ymmo expientia docet quod propter
uniformitatem et dissimilitatem aspectuum tem
poralium insurgunt inter homines natura
les dilectiones et naturales inimicitie. Hoc quilibet
expit. Nam quia diligit statum cum uiderit
nullis meritis precedentibus et sic odio habet
nullis de meritis precedentibus. Sic inter ci
uitates et villas et castra insurgunt dilectiones
naturaliter propter uniformitatem et dissimilitatem
aspectuum temporum constructionis
earum et sic insurgunt odia et bella ex infla
entia celesti. Sic et amicitie et paces
inter prouincias. Hec autem celestis
natura mediante motu est productiua gene
rationis et corruptionis in his inferioribus au
gmenti et diminutionis ne dum singularia
supposita ymmo in singulas mundi plagas.
Nam ex hac superna natura plaga habitabi
les et contra iuxta doctrinam philosophi ubi mare
fiet aridum ubi aridum fiet mare. Ex hac na
turarum repugnantia et dispositionum ex qua
rize contentiones et bella particularia et u
niuersalia insurgunt hec propter motuum et
aspectuum uarietatem. quedam exaltat que
dam extinguit et quedam deprenit. Dicitur
mundi regia uniuersalia et particularia.
Et hec demonstrari potest. Nam posita causa

sufficiēt pductiō alicuius effectus necesse est illum effectū pducī nisi addit aliquid ex trīnsecum impedimentum pductiōis. Sg natura celestis pīnet difformē motu et aspectu et ipsius ptes sunt difformes ex natura sui insitudo ergo necesse est pducī hoc effectus repugnantes et difformes cum non sit q impediri posset. Et hoc inferri posset naturaliter necesse est esse bella. nec aliter pos cederet naturaliter mundi gubernatio pfectior tamen licet q hoc celestis natura operetur in hoc inferius non tamen de pte et di recto in intellectus humanum ymmo durat libertas arbitrii ut in. ca. nabuchodonosor. xxiii. q. lili. et ca. de ciris et de pe. di. li. ca. sicut enim et plus in etbi. Sed operatur in ope gane miratam scilicet naturam que recepta ista entia administrant intellectui. Et sic per in directam insitudo hic est q scribitur in libro centum uerborum. Minus sapiens dominabitur astria. Sed quia hoc tractare nimis elongatur a terminis huius non aliter circa hanc deductionem insitudo. Sed sufficiat illa tam ex predictis et demonstratum bella pos uenisse a deo positue et effectue licet ex hoc ultimo inferatur non in mediate machina celestis naturaliter operando. In quo scribitur prope meas theoloyce in. x. ca. posse cōclm dī necessitate fore malos et rebellos etc. scribit tamen xxiii. questio. v. in capite. nō solus q bonum est esse domones quia sunt ultores ire dei in his qui malum operantur. nam per nabuchodonosor et per antiochum et per principes romanorum et per nōnullos reges gentiliū populū israeliticū delinquentē ultissimū aliquando puniit ut p belle scribit ambrosius transumptus xxiii. q. v. in ca. si. Nam promeritis subditorum deponatur ultia rectorum ca. si hereticus. li. q. vii. et in. c. l. ca. causa et questione in. v. si quid plura p prope meum scribitur scribant doctores in ca. v. de fore cōpe. l. restant q deus a pncipio creauit celum et terram et omnia que in eis sunt angelicū et humanam naturā. spiritalia et nō spiritalia et hoc rexit p seipsum pcepta dedit et transgredienti penā imposuit per seipsum scilicet ade et ene. puniit chaly et quodas alios uique ad noe. tempore deus cepit regere per ministros Et noe fuit cui deus dedit gubernationem arche et in hac rectoria successerunt patriarche reges et alii do nini hoc durauit usq ad Christum qui fuit naturalis dominus. Et in uicarium postea constituit petrum per illa uerba Tu es petrus et super hanc petram edificabo ecclesiam meā et tibi dabo clauis regni celorum. Notā l. c. in nono xxi. di. xxiii. q. i. loquitur. Item dī dixit accipe spiritum sanctū quorum remissio peccata remittentur eis Jo. xx. c. ad dī monstrandum q petro ut capiti leosus dixit petre pasc oves meas io. ultimo ca. Et sic uoluit ois deus q petrus pceisset omnibus et

elset cepas et caput principium xxi. di. cetera que in hoc ca. dicuntur p prope meum mibi probentur.

Capitulum xi.

Iti secundo q illa orta sunt huius gentium hic tamen pldera q licet dicant iura q bella sunt introducta iuregentium ut ysidorus. l. di. las gentium et hermogemanus iurisconsultus in. l. ex hoc iure. ff. de iusti. et iure est credo q bella orta habuerint non solum ex egre de naturalis humane intelligentie et create ymmo pmodialiter ex dispositione nature naturentis non solum influentis sup act? hu manos ymmo sup quibuscūq animatis et et humanis ut sit neq dicere q habent bella orta a iure nāli etiam ut distinguat a iure gentium q aliter differant pbat tex. in. l. i. q. las gentium et. q. las nāle et. l. ex hoc iure ff. de iusti. et iure et pma di. las nāle cum suo glo. et. c. las nāle. Qd hoc sit verus sic ostendit ex principis nālis cuiuslibet nāli create est insita nālis inclinatio ad exclusionem cuiuslibet repugnantis sic nāli dispositiōi hoc p inducendo in singulis naturalibus simplicibus et mixtis. Nam aque insitum est igni resistere et econtr ppter repugnantiam qualita cum sic in singulis elementis sic in mixtis in quibz possunt hec q p in beatis ubi ex nāli repugnantia complexionum ymmo inclinatio nāli ad occasionem alterius et econtra sicut in rōali creatura insita est inclinatio a nāle etiam circūscripto intellectuāli dictamine ad plagandum quocūq sibi repugnans quod hoc sit ppe rōe pbat. Nam natura omniū creatoz pductiō non minus debuit esse sollicita in functione rationabilis creature q ceteroz cum ipsa ceteris sit nobilior ut. c. cum infirmitas de pe. et remissio. et. l. sanccim. C. de sacrosanc. eccle. et. c. bec imago. xxiii. q. v. et ppter ipsam omnia infra globus uinare sunt pducta ut. l. in pecudum. ff. de uisur. Si igit natura induxit inclinationem nāley in ceteris creaturis ad quocūq sibi cōtraria profuganda quanto magis hoc debuit in rōabili creatura hoc idem sensuāliter patet per singula supposita discurrendo. Nam glbz hoc in seipso expit si hoc ex principis nālibz bonitibz insitum est ergo ex hac inclinatione nāli pmodialiter habuit ortum bellum. Cum bellum ut supra scriptum est sit contentio ex orta ppter tollendam repugnantiam. In spet ergo q illa contentio que est ppter tollendam dissonum et repugnans conseruatōi sue fundamentaliter habuit ortū a principis nālibz ut sic a iure nāle pnt distinguat a iure gentium. Sed statim dices hec destruit text? qui dicit ex iure gentiū ubi aduertendum q licet a iure nāli inducta sit ista inclinatio nāli circūscripta nāli intelligentia

tamen inclinatio illa regulat per dictamen rationis
 et intelligentie naturalis sicut dicimus in sin-
 gulis actibus qui debentur hominibus natu-
 raliter circumscripto intellectu utpote
 inclinatio ad cibum et potum et coitum ista
 hominibus competunt naturaliter et tamen
 in homine regulariter dictamine rationis quod
 non est in brutis que carent illo dictamine.
 Sic ergo credo fuisse mentem illorum tex-
 tus videlicet quod inclinatio illius inclinationis
 introducte a principiis naturalibus insurgit
 ex iure gentium. id est ex equitate generali ratio-
 nis intelligentie. Sed quod ipsa inclinatio sit
 de iure naturali hoc probat glo. in. Lex hoc
 iure. ff. de iusti. et iure et i. di. ius gentium.
 Nam glo. utrobique ponit sic ista verba sic in-
 telligit de inclinatione regulata per dictamen
 rationis. Et licet dicantur textus quod ex iure gen-
 tium insurgunt bella non tamen credo falsum
 dicere bella id est illas inclinationes. inclinatio-
 nes habere ortum a iure civili et a canonico
 Nam ius civile et ius canonicum non dicunt
 aliam equitatem quam sit equitas iuris gentium.
 Nam omne ius consistit in quadam rec-
 titudine et inde ius dictum est ut i. di. ius na-
 turale. Sed ius civile et canonicum sunt rec-
 titudo vite et equitas iuris gentium. Sed si
 addunt supra rectitudinem illam aliqualem ex-
 plicationem tunc dicitur ius civile vel canoni-
 cum. nam ius legale et ius canonicum habet
 specificare explicare rectitudinem et equita-
 tem iuris gentium quandoque eam determinan-
 do ad varios actus quandoque determinando
 per varios eventus. hec omnia probantur per
 tex. in. Ius civile. ff. de iusti. et iure. Tamen
 dicit ibi textus ius civile est quod nec in totum
 a naturali vel gentium iure discrepat nec per
 omnia ei seruit itaque cum aliquid addimus vel
 detrachimus iuri comuni. ius proprium. id est civile
 facimus. Est ergo verum dicere quod bella sunt
 de iure civili et canonico. id est de ipsa rectitudine
 que est ius civile et canonicum. Nec obstant
 textus statim allegati. quia illa rectitudo ni-
 hilo addito vel detracto iuris gentium nuncu-
 patur. Et sic loquitur iura statim allegata.
 Sed cum aliquid additum vel detractum est
 tunc civile vel canonicum nuncupatur. Nihil
 est tamen dubium quoniam ius civile et cano-
 nicum circa bella supra dictamen rationis ge-
 neralis aliquid addant. Ex predictis inferitur
 quo iure bella orta fuerint. Proponimus me-
 in hoc. ca. tenet quod bella orta iuncta dispositi-
 one nature naturantis non a iure gentium. Ta-
 men bar. et bal. et alii antiqui et moderni in
 Lex hoc iure. ff. de iusti. et iure tenent et iure
 gentium orta sunt bella per illum tex. doc. I
 §. ius gentium. insti. de iusti. et iure et doc. in
 ca. ius gentium. i. di. pro istis facit. nam dictio
 denotat causam immediate. id est. §. si de iudicio
 rei. naustra. sed dicitur per iuriscōsultum ex
 hoc iure gentium orta sunt bella. Ergo
 mihi videtur quod prius meus multum sapiēter

loquatur magis alte aspiciendo quod iuriste et ca-
 noniste et quod. l. ex hoc iure. Debeat intelligi
 prout ipse intelligit aliter dicemus contra iura
 Nam sicut comedere et bibere est cōe omnium
 animalium ita etiam cūilibus animali etiam bru-
 to est insita naturalis inclinatio ad exclusionem
 cuiuscunque ad expugnantis sue naturalis dispositio-
 ergo hoc non conuenit soli homini nimirum si
 non videtur procedere ex iure gentium sed ymmo
 ex iure naturali prius hoc sit verum in bru-
 tis probat in. l. i. §. cum arctes. ff. si quadru-
 paupie fecisse dicat.

Ca. xii.

Quando quero quo iure licitum
 sit bellum contra infideles et in-
 uadere terras eorum et propter hoc
 indulgentiam concedere cum iuribus
 in contrarium disponere videantur. Nihil
 ad nos de his qui foris sunt. ii. q. i. multi etiam
 quia origine possessiones et iurisdictiones sunt
 apud eos. nam deus propter totam rationalem cre-
 aturam hec produxit Nam apud bonos et ma-
 los facit solem coram. Mathei v. et vi. ad finem
 etiam qui ad fidem aggregati non sunt cum eis
 alii omnes incorporati sunt relinquendi arbitrio
 xlv. di. de iudeis ymmo quod plus est dimitti
 potest infideli iurisdictione super conuersos ad fi-
 dem diuino modo non nimis grauet. Primo ad
 thimoth. vi. c. Solo ut clare liquet est atten-
 dendum quod hic oportet premittere que tetigi
 in materia reprobata in prin. l. unde etiam
 habeat iurisdictionem et etiam vnde Imperator
 que hic premitto quia ibi plene tactum fuit
 Quo sic supposito etiam attendendum quod in
 eadem ciuitate sub eodem rege sunt duo po-
 puli et secundum duos populos due vite et secundum
 duas vitas duos principatus et secundum duos principa-
 tus duplex iurisdictionis ordo. Eadem ci-
 uitas est ecclesia. Unus rex est christus. Duo po-
 puli sunt clerici et laici. Due vite sunt spiritualis
 et carnalis. Duo principatus sacerdotum et
 impiorum tamen vnum est principale. id est ponti-
 ficatus In quo sit refofo alterius aliter frivole
 monstraret prius. xii. methaphis. concludens
 unitatem creatoris sic demonstrat multitudinem
 principatum mala entia male volunt disposi-
 vnde ergo princeps sic dicit etiam in propo-
 sito quia in quolibet entium genere est dare unus
 primum quod sit metrum et mensura omnium aliorum
 ut idem prius sit in monarchia tota est deue-
 nire ad primum mouens immobile ut idem prius
 philosophorum vii. et viii. tale non potest esse Imple-
 tum respectu pontificatus premitto infinita
 super hoc allegabilia. Sufficiat ergo inferre
 quod vnus est dominus orbis vii. q. c. i. in apib.
 ix. q. iii. cuncta per mundum et c. p. principem
 lem. ff. ad l. Rod. de iactu. l. de prelatio et iste
 est papa et hoc non solum super fideles ymmo
 etiam super infideles habet iurisdictionem quod
 clarius demonstrat. Nam christus super omnes

habuit potestatem unde in psalmis. Dens iudicium tuum regi da Si xps habuit nō fuisset diligens patrum. si petro constituto vicario suo curam non dimisisset q̄ neq̄as est dicere cum petro tradidit clauas dicens q̄d cūq; ligaueris. tē Mathei xvi. et alibi p̄sce ones meas io. ultimo. Sic igitur papa habet d̄ iure iurisdictionem super infideles licet nō de facto. Hinc est q̄ gentiles habentes solā legem nature peccant contra legem nature poni potuerunt per papam. Nam scribitur genesi xix. ca. q̄ lodomitz puniti sūt a deo ergo et uicarius dei hoc poterit. Idem si colant idola. nam naturale est creatorem colere et nō creaturas. Idem poterit etiam punire infideles si faciunt contra legem suam in moralibus et nō puniuntur a prelati suis. Et de xpianis nō est dubium quin puniri possint si faciunt contra legem euangelii. Ex quibus infertur q̄ papa tanq̄ uerus princeps pōt bellum indicare infidelibus et indulgentias concedere propter recuperationem terre sancte et maxime terre consecrate natalitate xpi habitatione et morte eiusdem ubi non colitur christus sed machometus. Item terra sancta uicta fuit post mortem xpi iusto bello per Imperatorem Romanum qui post spoliatus fuit per infideles. Idcirco licitum est pape recuperare natione principatus quod optinuit. In aliis autem terris que non sunt consecrate nec imperius nec ecclesia habuit iurisdictionem de facto potest papa facere preceptis i christianos subditos al potest eos per sententiam priuare iurisdictione sua. Et per hoc uide que ut in pluribus tracta sunt de his que no. Inno. de uoto q̄ super his patet solutio ad primum quesitum. scilicet d̄ iusticia belli inducitur ab ecclesia contra infideles. Ex quo infertur iustificatio belli inducitur per Imperatorem contra hostes. De his que hic dicuntur per prosum meuz bar. in. l. hostes. ff. de captiuis et postliminio reuersis. sed remittit ad dicta Inno. in. c. q̄ super his de uoto. et bal. in. l. ex hoc iure. ff. de iusti. et iure. Idem facit in lectura antiqua et dominus abb. et alii in. c. sicut. j. d̄ iure iuran. se pariter remittit ad dicta Inno. primo non est dubium q̄ ciuitates que fuerunt sanguine christi consecrate non debent in manibus esse infidelium cum multi Imperatores acquisierant dominio christianorum propter has ciuitates recuperandas a Papa reuersis potest bellum idcirco hoc cōcludit tota scola iuris canonici uide bar. in. l. xpianis C. de paganis. Deinde inno. in dicto. c. q̄ super his concludit q̄ infideles licite tenent dominia et principatus et alia bona. q̄ nō est distinctio p̄onaz apud deum et hinc causa si debent a xpianis molestari. fateor tamen q̄ si infideles delinquant papa potest bellum indicare contra eos. Sed hosti. tenet q̄ si infideles non recognoscunt dñm ecclesie licite

possunt bonis spoliari sed si recognoscunt dominum ecclesie et xpianis non sunt infideles posset sententia tollerari. Inno. pbat in. c. dispar xxiii. q. viii. opi. hosti. uideri non ppe tex. cum glo. in. c. si de rebus. xxiii. q. vii. Tu pondera q̄d esset incōueniens q̄ infidelis dñm non recognosceret et gauderet ea dignitate q̄ esset alicuius ciuitatis dominus. Nā eis interdicte sunt dignitates ut habet in. l. si. C. de iudeis et ibi bar. Nullus enim pōt habere iurisdictionem temporalem nisi sit xpi anus bar. in rubrica de iusti. et iure glo. in. l. si spadonem. §. io ante. ff. de excu. tu. Sed bene posset statim in ciuitatibus habere xpi et non deberent molestari sed q̄d possent habere aliquem principatum hoc nō fateri nec aliquis dominus ciuitatis quia tunc haberet vim dignitatis. Pondera intantum inq̄tuz prosum meus dicit q̄ infideles delinquentes puniuntur p papam et sic sequitur Innoc. in dco c. q̄ super his qui uident totam iurisdictionem infidelium attribueri pape q̄ non uidet repp̄ fm dñm abb. ibi Nam etiam sunt sub romano Impio ut. c. de iudeis et. c. de paganis per totum dic quedam sunt crimina ecclesiastica et cōmissa per infideles et puniuntur per papam Aut cōmissa sunt per eos crimina nō ecclesiastica et puniuntur p Imperatorem fm dñm abb. ibi et posset dici diuissum Impium cum Ioue celar. habet tamen pe. de ancha. in reg. ea que in vi. q̄ concludit q̄ ecclesia debet infideles punire uide dominum abb. in. c. gaudemus de diuor. uide abb. in. c. de infidelibus de consang. et affini. et an papa inter laycos infideles habeat iurisdictionem uide dñm abb. in. c. consulant de appel. Nam infideles immediate sūt sub tempali dominio ut p Jo. an in dicto. c. gaudemus p abb. in. c. in nōnullis de iudeis. uide abb. in. c. p̄ miserabilem de vris uide glo. in clem. pms de testibus in v. p̄ncipi glo. in cle. si. de re. iudi. in vo xpiani glo. si. in cle. si. d̄ iudeis uide. c. p̄stituit xvii. q. iiii. et ibi gl.

Ca. xiii.

Bi sciendum est q̄ duo sunt populi. scilicet romanus et populus c̄ne. us. De populo romanus primo oēs qui in totum obediunt Impio romano. Nam populus accipitur p toto Impio ut. l. roma. ad municipales. Quidam non obediunt in totum. sed in aliquibus ut qui uiuit legibus imperii et fatentur ipsam dominum orbis ut sunt ciuitates lombardie et similes. et isti sūt in populo romano. Nam cum in aliquibus iurisdictionem exerceat ipsam retinet ut. l. si prius de aqua plu. arcen. et ibi no. Quidam sunt populi qui nullo modo obediunt imperatori nec uiuit imperii legibus. sed dicunt hoc facere ex priuilegio ut ueneti qui asserunt se hoc facere ex priuilegio. Et isti etiam sunt d̄ populo romano. q̄ precario hoc tenent ab im

peretore et ipso renouare potest qui noluerit
ut. l. si quis in pira. ff. de legi. iii. Doctores
illud privilegium eis concessum debet esse ac-
commodatum ut non principis civitatis romana
ff. de captivis. l. in bello. §. si quis fuit. Qui
dam sunt populi qui non obediunt Imperatori
et asserunt hoc sibi competere ex contractu
ut sunt paucie romane ecclesie que asserunt
hoc sibi competere ex donatione Constantini
et aliorum Imperatorum. Et isti etiam sunt de po-
pulo romano. Nam ecclesia sibi exercet iuri-
dictionem qui habebat Imperator vnde si definit
propter ea esse clares romanus. Idem dico de
regibus qui non solum sed subditos impera-
tori ut rex francie Anglie Dypanie et simi-
les qui asserunt hoc sibi competere ex privi-
legio vel prescriptione. Et per hoc infero
quod omnes gentes terre que obediunt sancte ma-
tri ecclesie sic sunt de populo romano. Et
si quis diceret Imperatorem non esse domi-
num diceret contra textum evangelii. dum
dicit exiit edictum a Cesare Augusto. Popu-
li autem extranei sunt qui non solum impera-
torem dominum ut greci qui dicunt suum
imperatorem esse dominum. Item tartari
qui dicunt francorum esse dominum. Et
sarraceni qui dicunt esse sui dominum solda-
num. Inter istos tamen est differentia. Nam
quidam sunt nobis federati ut greci contra
tharcos. Quidam cum quibus habemus pa-
cem ut sunt tartari. nam mercatores nostri
vadant ad istos et sui ad nos. Quidam sunt
cum quibus nihil facere habemus ut indci.
Quidam sunt cum quibus guerram actuali-
ter sunt sarraceni et hodie cum turcis. In-
feratur ergo quod cum principe sit secularis su-
periorum non habens in secularibus nisi for-
te ut dixi quod ipse potest indicare bellum contra
hostes suos et qui sunt post statim patuit. Et
hoc est bellum de quo loquitur. l. hostes. ff. de
captivis et de iur. sig. l. hostes et in hoc nedi-
cat sibi locum bellum quod indicitur a popu-
lo romano ut imperator adeo quod si imperator
inducit bellum civitatibus aliquibus itale re-
bellibus nediicat sibi locum effectus publici
belli. quod idem si repugnetur officiali impera-
tori vel pape non propter imperatorem vel
papam. Idem arguitur bar. in l. hostes. de cap-
tivis et postliminio reserfas sequitur ad quod
hic predicatur per personam meam.

Capitulum xiiii.

Et d. quodcumque alio a principi
per licet bellum inducere unius
sola solutio non licet sine prin-
cipis auctoritate. Nam tamen sine principis
licentia licet arma portare. ut. C. ut unus ar-
morem in rubro et nigro. et glo. in aut. de ma-
principi colla. iii. et in aut. de armis. §.
colla. vi. et est ratio nam nemini sine prin-
cipis licentia licet arma violare. Jura principis

violat qui sine iuris solemnitate manus regia-
tas sibi picit ubi habetur copia in dicitis
idcirco sine eius auctoritate non licet. Solum
ergo principi competit sua auctoritate cum
non habeat superiorem ad quem recurrat per
iustitiam. Hodie tamen quia sunt populi non
recognoscentes superiorem de facto non re-
quiruntur in illis superioris auctoritas cum non
recognoscent ymmo tota die bella inducuntur
a populo contra populum in illo regito. ymmo
dictum peni vel per ea que voluit older in co-
silio. ccc. xxi. in capiente ut eius de quo queri-
tur aliquis notitia. et ubi dixit quod sicut in
donatione facta imperatori vel ab imperatore si
requiritur informatio ut in ait. Idem est. C. de
don. no. glo. in l. pe. et. et. Item erit in dona-
tione regis seu alterius domini de facto tenen-
tis locum imperatoris in terra suis alit. d. l.
p. t. vide in an. in addic. spec. in t. de iustis
ram editio. §. p. p. in ultima addic. et in o. y-
mmo. in. c. cum contingat de iure iurum. in
penit. carta et aliquid per bal. in l. scilicet. C. de
don. vide. c. p. venerabilem qui nulli sunt le-
gittimi vide bar. in l. i. de decre. decu. li. x
in v. col. vide. d. abb. in. c. sup. quibundam de
v. huius. in. iii. col. et scripti multum late in
repeti. mea. l. ceteris. ff. de vulga. et pup. et c.
Et pondera quod illud quod hic dicit per personam
meam approbat per d. abb. in. c. dilem et. j. de
iure iurum. in. iii. col. vide de morte Innocen-
tium. in. c. olim de restit. spoli.

Ca. xv.

Lectiones quoque nunc bellum quod
promouet Imperator contra ecclesiam
sit iustum et tenentur subditi ei in
hoc obtemperare. vide quod sic quod
sit princeps ecclesie vel mandato ergo. et c. Et ubi
quia dat iurisdictiones de iudi. c. novit qui
sibi sunt le. c. et per venerabilem de app. l.
in duobus etiam quia in pertinentibus ad ar-
morem usum subditi debent et tenentur obedire
Imperatoris etiam scismatico. l. q. iii. inf.
Solum contrarium est accipere. Nam imperator
est advocatus ecclesie et tenet eam defendere
idcirco non potest eam impugnare de iatis ex
libero ven. c. vno de restit. spoli. c. cōgrete
ymmo inducendo bellum contra ecclesiam
meret perdere privilegium inducendi bellum
cum illo abutitur. xl. q. iii. privilegium de decimis
substantiam ut puniet in quo delinquit et inf.
ac. quanto. §. ne autem ymmo talis p̄mancia
in principe non distat ab ista de heretico ex
emplificamus. l. §. i. et ubi no. Etiam quia p̄p̄
superior est. Nam examinat imperator ipsos
reprobos et deponit et elect. venerabile et re-
ludi. ap. l. li. vi. In hoc igitur casu non
tenentur subditi laicare imperatorem contra
ecclesiam ymmo e contra et potest papa absol-
vere eos a vinculo fidelitatis xv. q. vi. non
sanctorum et. ca. lures et nota de heretico

excommunicamus. J. de pe. c. fl. Et quæro
a proprio meo quomodo potest Imperator
inducere bellum contra papam et subditi ha-
beant ei obedire. Dico secundum Jo. an. et
hosti. in ca. olim Directi spoli. Dicit Impera-
tor est homo iniquus et peccatos multos se
non corrigit sed peiora committit et tandem
excommunicatur per papam et omnia contem-
nitur et mouet bellum propter hoc contra ec-
clesiam et concludunt postea cum proprio
meo hic quod non sit iustum bellum. Unde domi-
num abb. in ca. sicut et J. de iure iuran. l. vi.
co. l. unde dominum abb. in capitulo venit
de iudic.

Ca. xvi.

Iterum queritur quid contra
si papa inducat bellum contra
Imperatorem scismaticum here-
ticum vel alias usurpantem iura
et libertates ecclesiarum omnes fideles tenentur
iurare papam et etiam infalli Imperato-
ris abfolui possunt a iuramento quo tenentur
vel declarari non teneri ut ca. nos sanctorum
et ca. iuratos xvii. q. vi. Tu pondera quod
idem tenet dominus abbas in ca. sicut et J.
de iure iur. in vi. coll. unde ca. uenerabilium
de electis et in ca. pro humani de homici. nisi
doc. in ca. ex gestis de cle. no. res. bodie fa-
cit quod habetur in extraneante bonifacii
que incipit unam sanctam.

Ca. xvii.

Iterum est videndum de aggre-
ssionibus et ipsum bellum pothi
entibus quo ipse fieri debent.
In bello sunt legio et habet legio
centum pedites et septingentos xii
emites. Sunt cohortes et quibus cohortes ha-
bet xx. alas. Et prima vocatur miliaria. Et
habet pedites mille. Legiones ex xli. Se-
cunda quingentarii dicitur et habet lvi. lica
no. glo. ff. de his qui no. in sa. l. l. in prin. hoc
igitur et dux et odo faciunt bellum summum
do pro multiplicandis apta et ad bellum prepa-
ta non autem per secula bellandi. Duo tamen
principaliter fundant bellum scilicet arma et
iura. Hoc dividitur in tres partes. equites
pedites et clanc. Nam equitibus campi clas-
sibus marias et flumina. pedibus colles ur-
bes plana ardua seruantur. Hinc inferunt
quod pedites magis sunt necessarii rei publice
quam equites quod possunt undique prodire.
Tu pondera hoc. sequitur. d. l. l. illegas
hic per primum meum et alii doc. et postea
dico quod pedites et equites habet se ut ex-
cedentia excessu respectu habito ad qualitatem
temporis et loci. ar. glo. l. apud antiquos. C.
de far. can. similibus. De legione vide glossam
in. c. l. ne sede vocan.

Cap. xviii.

Ilites autem in bello sic se habe-
re debeant ut seruent iuramenta
quod presterint. Nam iurent
se strenne omnia facturos quod
precipit Imperator et non deserturos mili-
ciam nec mortem recusaturos pro defensione rei
publice. ff. ex quibus. ca. ma. l. pen. C. de his
qui non imple. ff. l. prima libro. x. Eorum
dubios debent obedire ut lege collatores
in principio. Nam cum a re publica
amantur et aluntur solis debent insistere
utilitatibus et esse in numero milicie ut armo-
rum quotidiano exercitio ad bella se sparet
ut. l. milites. C. de re. milita. et sic debet du-
cibus obtemperare quod si contra preceptum eorum
fecerint etiam bene nihilominus capite pa-
riant. ff. de re. mili. l. de fectorem. §. in bello.
Abstinere debent ab aggre. cultura animalli-
um custodia mercimonis questu aliena non
peragant negocia. Ad civiles curas non ac-
cedant alioquin milites et eius privilegia
madabunt et de re. mili. l. nemo milites. C. v.
procur. l. militem. Non emant predia ubi
militant et tempe quo militant nec etiam ali-
eno non molestant. Dicit non inquietabunt
fallit illa regula ubi fideles distrabat eorum
bona paterna et ubi ex hereditate querunt
hoc autem inductum est ne studio culture a
militis aduocent hec habent. ff. de re. mili. l.
milites. Pondera quod sex sunt necessaria
in milite. Primo ut non sit negociator. Item
quod prestat sacramentum per gentem principis
quod mortem rei publice causa non erubet. Item
talis ei cingat. Item stigma. l. nota publica
debet eis in brachiis insigi et inscribi et poni
l. iii. C. v. fabrice. item i. mo. alio. poli et scribi
de his per glo. in vi. l. pest. et per glo. in ra-
belca insi. de ti. multis vide glo. pnam. li.
q. l. in. c. prohibet et ea quod habet l. l. C. locasti.

Cap. xix.

De decem autem belli pertinet
militibus percussione comestam
dare equos militares extra pro-
uinciam duci non permittitur mi-
lites in castris retinere ad armorem exer-
citationem pducere ad opus prestatum pscuti
venatum non mittere clanc portarum fisci-
pere vigilas circuire fermentationi comili-
tationum interesse frumentum mense frande
cohercere delicta castigare querelas comili-
tationum audire valitudinarios inspicere. Hoc
habent in l. officium. ff. de re milita. Ad
eius etiam pertinet officium in virentis fla-
minis ripas legionem ponere. Et ut omnino
nullus equum polluat ne ut ablendo quous
fudorem publicos oculos maculet sed procul
in interioribus partibus fluminis id facere p-
mittat. Hoc habent. C. de re mili. l. ingentis

Ad ipsius etiam officium pertinet castra ponere ubi lignorum pabuli aque copia habet et ut diutius commorandus sit loci salubritas eligatur in re sit uicinus aut altior locus qui ab aduersariis captus possit efficere. Considerandum etiam ne torrentibus inuidari consueverit campus hoc vegetius de re militari. l. i. c. xx. Ad eius etiam officium pertinet finemque militum castramentari castra ne maior multitudo constipet nec ne paucitas in latioribus ultra quam oportet rogat extendi. Ad bonum etiam ducem pertinet in quo loco dimicandam est noscere qui quanto superior fuerit utilior iudicat quam si victorias et pericula sperat contra milites hostium loca in equalia aspera montuosa debet eligere. Sin autem contra loca plana potentis neque siluis neque paludibus impedita. hoc uegetius. l. iii. c. xiii. de re militari. Hoc ad officium ducis pertinent ad specialem magisterium militum ut. l. magisterie. C. de iure omni iudi. l. i. i. cola. de re militari. Pondera quod etiam dux debet omnia que sunt in bello que sunt causa uoluptatis ordiata sustinere ut peregit publius cornelius stipio. et alii imperatores efficiantur dari et non delicti ut nostris legitur in historiis maxime in ualerio in. ca. de militari disciplina. Circa multa enim debet esse doctus imperator hostes ferire. presidia agitare nihil metueret nisi turpem famem hyemes et estatem iuxta patienti humi requiescere eodem in tempore in opera et laborem tollerare per salustium iugurtio In primis imperator scientia rei militaris debet polleere cicero in oratione pro pompeio Unde uegetius de re militari dicit nullus est quem oporteat uel plura uel meliora scire quam imperatorem Cuius doctrina debet omnibus prodesse subiectis. Nam turpe est patricio uiro ignorare ius in quo uersetur. l. ii. §. serui autem sulphicius. ff. de origine iuris debet esse litteratus. Nam solitus est dicere Cato quod plus rei publice prodest qui disciplinam militare conferat cum iuris. Nam secundum uegetium xiii. ca. iii. libri bonum imperatorem conuenit noscere ipsum locum in quo dimicandum est. Et alia uide de quibus ibi. Item cicero in oratione pompeiana sic loquitur uirtutes imperatorie uulgo esse existimantur sed labor in negotiis fortitudo in periculis industria in agendo celeritas in confitendo consilium in prouidendo.

Capitulum xx.

Arce autem puniuntur milites ut uarie delinquit. nam ut committunt delicta propria aut communia Et in propriis puniuntur pena militari et ager pena gradu sepe milicie ut. l. ii. ff. de re militaria. Punitiones autem sunt pecuniarum castigatio. Inuiciorum interdictio ignomine missio ab exercitu missio gradus

deiectio. In metallum autem uel opus metalli non deputat sed decapitatur non enim pro milite sed pro hoste reputatur. ff. de re militari. l. ii. §. i. et §. is qui. et l. i. peditores. Capite autem puniuntur qui proposito manus intulerit qui inobedientes fuerint qui spectantibus ceteris prior fugas arripuerit exploratores qui secreta nuntiant hostibus qui metu hostium infirmitatem simulant qui comilitones gladio vulnerauit qui sine causa se vulnerauit uel mortem sibi consciuit secus si uite tedio uel doloris in patientia. Nam tales infamia non debent. Per vinum autem aut per lasciuiam lapsus militia mutat qui non defendit propositum suum cum potuit capite puniri qui non potuit et percutitur. Hoc habetur. ff. de re militari. l. omne delictum et l. iii. §. si. Item qui exploratores obuiuit hostibus insistentibus aut de fossa toto recedit capite puniuntur etiam si rem bene gesserit. ff. de re militari. l. iii. Item si cocitauit atrocem seditionem desertor tempore belli capite puniuntur tempore pacis equis gradu repellit pedes militia mutat. ff. de re militaria. l. non omnes Tamen desertores puniendi sunt et qualiter haberi debet ratio gradus ordinis stipendiorum et aliarum circumstantiarum qui excessit pascui comestus ut emanator uel desertor reputatur habet tamen rationem quibus tardius uel citius rediit uel si implemento aliquo. ff. de re militari. l. iiii. §. si. et l. qui comest et l. non omnes. Habet etiam rationem ante acta uite. Emanator est qui diu vagatus a castris ad ipsa rediit desertor qui plerumque tempus vagatus ad castra reducit. l. iiii. remanens. ff. eo desertor si in urbe inueniatur capite puniuntur alibi si ex prima desertione captus iterato deserat capite puniuntur. ff. de re militari. l. non omnes desertorum desertorum bona confiscantur. C. de re militari. Pondera quod alienasse arma graue est crimen et simile est desertioni et hac si omnia arma alienauit. Si vero tibiale uel humerale alienauit. uerbis cedendus est. Si uolontariam scutum et gladium desertori ipse est similis l. qui comestus speciem. ff. de re militari. In omnibus que hic dicuntur per pauum meum. Parcendum tamen est tironibus. l. iii. §. si plures. ff. de re militari. et l. i. qui cum uno. §. si. et l. iterato delinqueret et c. ubi ibi.

Cap. xxi.

Ad quia dictum est super in. c. xvi. preterito ibi ulterius est uidendum de aggregatibus et c. in fine cap. quod fortitudo uel uires et arma fiunt bellum principaliter et quia in iure non discutitur natura fortitudinis explicite expedit quod ipsius natura aliquantulum explicetur et per modicas questiones cum quibus eius natura concludatur. Et quero primo an fortitudo sit uirtus moralis et apparct quod non Nam fortitudo est dispositio corporalis ut. l. i.

C. de athlet. li. xii. de his q no. inf. l. athlete ff. ad. l. aquil. qua actione. §. si quis in collatione de pug. in duello. per totu. C. de gladiato. l. i. ergo non est uirtus moralis cū dispositio corporalis differat ab habita seu dispositione anime et sic inferior gradu. de de peni et remis. l. cum infirmitas xii. q. i. precipim? xiiii. q. iiii. si habes. C. de sacrosanc. eccle. l. sanctimus. Secundo sic omnis uirtus moralis est coniectrix in passionibus et operationibus ut probat philosophus ii. ethico. Sed fortitudo est coniectrix in medio ut idem philosophus. ergo. Tercio sic quod non est una uirtus. non est uirtus ymmo uirtutes. quia pluralis locutio ad minus duorum numero est contenta. ff. de testi. l. ubi numerus et regula pluralis. de reg. iur. li. vi. Et confirmatur per dictum philosophum primo de cencorum. Nam eadem est definitio proportionis et unius propositionis quod fortitudo non sit una uirtus probat hic minor. nam una uirtus opponitur duobus uicis extremis ut xli. di. sepe de consue. ex pte. Sed fortitudini opponantur quatuor extrema scilicet intimitas et timor et audacia. et defectus in audendo qui est ignorantia ut probat textus i eth. Oppositum probat philosophus iii. ethico. Pro solutione questionis est aduertendum quod fortitudo sumitur equivoce pro fortitudine que idem est quod robor corporis et fortitudine que est uirtus moralis. prima est potentia quod quis potest mouere ut probat philosophus primo rethor. et utraq; reperitur in bello et sic sumpta fuit generaliter cum dixi quod fortitudo seu uires et arma fundant bellum cum utraq; requiratur sed de prima que est robor corporis non est dubium quod non est uirtus moralis per supra allegata. Sed de secunda procedit quod et illa est uirtus secundum quam nos bene habemus circa timorem et audaciam in bellicis periculis et de ista prosequamur quia prima est plana in modis et temporibus. Pro intellectu autem fortitudinis anime est attendendum quod in audendo et timendo contingit exercere et deficere et utrobique male agere.

Contingit et medie se habere et sic uirtuose. Differt tamen audacia a timore. Nam audacia est passio appetitus irrationabilis secundum quem inclinamus ad aggrediendum terribilia. Timor inclinat ad fugiendum et quod libet experitur in seipso. sed utraq; contingit bene agere et male. Nam si quis uideret decem armatos et solos aggredere eos. male circa aggressuram et male circa timorem ageret. Sic etiam in timendo quis excedere potest ut exemplum si sint centum homines inaguit et non uideant nisi centum et fugit male cal. Sic etiam non aggrediendo ut si uiderit spoliarie ciuitates si non aggrediatur male agit. Et sic uidetur excessum in non timendo cum expedit. in timendo cum expedit. in aggrediendo cum non expedit et non aggrediendo cum expedit. Et sic habes uicia extrema audacia et

timorem et utrobique gradum ut supra. Alterius est notandum quod ubique est repere excessum extremorum uiciorum et vitupabilem ibi est reperire medium bonum et laudabilem quasi esset totum malum et vitupabile. Nam posset dici quod defectus est vitupabilis. Nam defectus diceret defectus mali et sic non foret malus. Expedit igitur quod in medio sit bonum cuius respectu unum dicat malum excedendo aliud deficiendo. Ex his inferuntur due questiones seu due conclusiones per solutionem questionis. Prima quod fortitudo anime est uirtus moralis. Secunda quod est una uirtus probatur prima. Nam omnis habitus electus mediū laudabilis est uirtus moralis sed fortitudo est huiusmodi ergo probatur maior per locum a definitione que argumentatio est valida in iure. ff. de reg. iur. ff. de polli. l. i. in prin. et l. bona fides. c. ti. Sic autem diffinit philosophus uirtutem moralem finem ethico. probatur minor. Nam fortitudo est habitus intellectus mediū circa timorem et audaciam ut probatur philosophus iii. ethico. Confirmatur illa est uirtus moralis que generatur in nobis in more id est consuetudine et hec appellatur moralis. Fortitudo est huiusmodi ergo et probatur maior per locum a causa formali que argumentatio est valida in iure. ff. ad. l. fal. l. si is qui quadraginta. §. quedam. ff. loca. l. rei. §. ope. ff. de v. signi. l. edificia. §. perfectissime et l. i. quod forma. c. ti. l. i. q. i. de trabe de bapti. obitum. Probat minor. Nam in actu bellico propter pericula appetitus sensitivus inclinat hominem ad fugam ut dicit philosophus ubi in bellicis vendicat sibi locum ita et ad ea que sunt impetuosa et sic nos inclinat ad extrema uiciorum uirtus autem que est promptitudo appetitus rationalis inclinat ad medium et illa promptitudo generatur ex actibus iteratis alias non delectabilem operari et sic non esset uirtus cum in uirtuoso nulla debet esse appetituum repugnantia ut idem philosophus secundo ethico. et patet prima conclusio videlicet quod est uirtus moralis. Secunda conclusio est quod est una uirtus. Quidam hoc sic probant. Timor et audacia sunt passionibus contrarie fortitudo est uirtus media ergo est tantum una consequentia probatur. Nam unum quod quod agens intendens ad argumentum unius contrariorum tendit ad remissionem alterius et sic uirtus minuens timorem auget contrarium et contra. Confirmatur uirtutes morales specificantur a fine. Sed unicus est finis ergo unica est uirtus. Primus patet per locum a finali quod est ualidum in iure a. l. vnus. §. si fuus. ff. de consti. l. ultima. ff. de decur. l. generaliter. C. de epi. et cleri. xvi. q. i. c. cum cessante de appel. et c. et si christus de iure iur. per secundum. Nam finis fortitudinis in bellicis est bonum corporis et si alio bellat propter lucrum non est fortis ymmo auarus. Alii dicant aliter uidelicet quod timor et audacia non sunt passionibus contrarie hoc probatur sic. Timor et audacia se compatiuntur in eodem respectu eius

subditi repugnantes principibus suis. exempli
huius repugnantie collitur incontinente. Nam
in incontinente appetitus sensitivus inclinat
in excessum utpote in ordinatum cibum po-
tam vel aliquid simile. Ratio dictat illud su-
gendum ut uocini et incontinente vincit
Intellectus. et ratio et proprie continentia non
est virtus moralis formata. nam ut iquit idē
pbius in virtute anima consonat. unde cum
ex multis et frequentibus actibus in appeti-
tu sensitivo firmata fuerit promptitudo que-
dam inclinans ipsam appetitum sensitivum in
bonum et conformiter rationi tunc proprie est vir-
tus. In incontinente autē patens est hec
repugnantia. sed ibi vincit appetitus sensiti-
vus nec illa dicitur victum firmatam donec
ex frequentibus actibus in tantum assueverit
inclinare bellum spirituale humanum loquē-
do moraliter. De repugnantia etiam lo-
quitur apostolus ad romā. vii. video alium. l. repug-
nantem legi mentis mee transumpte xxxii.
q. vi. sed pensandum de consti. nam cōcupis-
centiam et de hoc spirituali bello loquitur gre-
gorius xxi. q. l. nisi bello. In hac autē re
pugnantia ab adolescentia reguli est inclina-
tio in malum. Nam omnis etas ab adolescen-
tia prona est in malum genēsis viii. ca. xii. q.
l. omnis etas. Et ratio confertur multiplex
assignari. Prima quod malus potest quis per se bo-
num autem super gratia. Alia est propter somi-
tum originalis peccati impellētem ad malum
Alia quod facilius ad malum bonum. Nam con-
sistit in medio essentialiter. uicia autem i ex-
tremitatibus ad medium aut trāsitur unica
via. Ad extremam autem multiplex. Alia quod
plura sunt impedimēta boni quā mali. Alia quod
non sit bonum nisi cū iudicio rationis. quod ado-
lescentes parum valent propter offuscationē
organorum corporalium. Et credo ueriores
rationem. Hec de bello spirituali quod circa
plura possit tractari. sed premitto quod trā-
cenderent metas iuris in quibus minus quā
possibile sit intendo discere. Transeo cū
proptius meo et rationes que hic allegantur
per eū quare adolescentia sit magis prona ad
malum quā ad bonum allegat etiam proptius me-
us in probe. cl. in. ii. dam glo. ibi dicit quod per
sensualitatem appetimus delectabilia corpori
et fugimus nocua. et ponit etiam proptius me-
us in gbe. gregorianus.

Capitulum ix.

Erco tractaturus sum de bello
universali corporali. et ipius trac-
tatum explicabo per quōnes. primo
quo iurē ortū et inductum sit bellū. Secundo
quibus liceat indicare uniuersale bellū. sub
lungendo contra quos. Tercio que sint agre-
gātia. bellū explicando per modi siue actus lici-
tos et illicitos planari bellū aggregātū. Et
formando quādam quōes circa ipsa. Quarto

que sint plene que accedere possint ad bellū
Et quid de accidentibus non astrictis. Quarto
de his spoliis que sunt in bello et aliis gubulā
que in bello sunt. Sexto per modum tabule
per instructionē canonice de quōtionib⁹ con-
tingentibus materiam belli ubi cūq; in corpe
iuris ambici tractatum fuerit per glo. et doc.
remittent. Opere precii est ut sequamur
diuisionem belli uniuersalis corporalis traditā
per pauam meum hic quia eius ordinē legēbim⁹

Ca. x.

Edeo ad primum. Et primo quo
quo iure ortum habuit bellū uni-
uersale. Solo iurē diuino et iurē
gentium diuino ut pbat Jo. viii. primo regi
vi. c. iurē gentiū. ff. de insti. et iure. l. ex hoc
iure. Dicit quod bella orta sunt iure diuino
ubi sciendum est quod bella nedum dīo pmitte-
re immo politice concedentem introduce
sunt et hoc demonstrari potest. Nam omnis
facultas tendens in bonum a deo posita ne-
dum pmissus deriuat. Sed facultas belli in-
ducendi iusti tendit ad boni ergo a deo po-
situe puenit pbat maior. Nam omne datum
optimum et omne donum pfectum defursum
est descendens a patre luminum. Jaca. i. l. q.
i. q. pie. Probat minor. Nam inductio bel-
li iusti et bellum iustum tendit ad bonum. Nā
tendit ad pacem et quietem uniuersi hoc p-
bat auctoritate Augusti. ad Bonifacium sic
inquiens. Non enim bellum querit ut bel-
lum exerceat sed bellum querit ut pax oriet
et subdit Esto ergo bellando pacificus ut eos
quos expugnas ad pacis utilitatem vincēdo
pducas. Hec habet. xxi. q. not. Est igit
finis belli pax et tranquillitas uniuersi ergo in-
ferunt adeo originaliter et positue puenisse.
Confirmat nam omnis actus punitus malo-
rum a deo puenit. Sed inductio belli iusti ē
punitiua malorum et rebellium ergo a deo po-
situe puenit. Probat maior. Nam scribit
mibi iudicem et ego retribuam puer. xxi.
et xxi. q. l. Item cum in puerbis et alibi
mea ē ultio et ego retribuam de throno. xxii.
c. ad beate. x. ad. ro. xiii. c. Probatur minor
aut. Augustini in sermone de puero cēturiōis
xxiii. q. i. parat⁹ et non cōrumpendo immo per
hanc inductionem concludi possit theologicē
de necessario in uniuerso fore malos et rebel-
les. Nam maiestati diuine insunt act⁹ pē-
nitiui bonorum et punitiui malorum ut scribit
Intellectu bonum. tē. Tunc illo premisso
posset sic induci posito actu necessario ponit
obiectum terminatiuū illius actus hoc pba-
tur per philosophi li. ii. de anima. Nam
posito actu visionis ponit obiectum uisibile.
Item et actu auditionis posito ponit obiectū
audibile posito ergo a principio creatōis mū-
di actu punitiui in deo necessario ponit ob-
iectū punitibile et tale est malū ut. d. dictū est

Confirmat primum principale. Nam omnis actus per quem tollit nocendi facultas a deo positus puenit. Sed inductio belli iusti est huiusmodi. probatur hoc aut. aug. sic inquit. tis bella gerantur ut ad pietatis iusticie societatem minus consolatur. Subdit. nam cum licentia iniquitatis capitur. utilis vincitur quoniam nihil est felicias felicitate peccantium quoniam penalis nutritur impunitas et mala voluntas velut interiore hostis roboratur. Hoc habent xxiii. q. i. v. et. per hoc. Confirmatur omnis potestas est a deo habente vel permittente. Ergo potestas bellica sic puenit sed non solum permittente. sed iubente ergo iubente. probatur principaliter a d. roma. xlii. transpositione xxiii. q. i. quid culpatur. Quid plura nam ut hoc patet inspectis mundi generationibus. Nam a principio creationis mundi usque ad tempora noe deus per seipsum et sine ministro malos malos exterminabat ut patz de chayn et lamech et quibusdam aliis regibus ut scribitur gene. iiii. xxviii. ca. per se ergo bella induxit punitura et malos exterminatus. Inferitur ergo expremisse bello iure diuino iudicia originaliter figuratiter. ymmo forte demonstrari posset. Nam inquit naturalis hoc est parvus mundus et sic fit gubernatio in quo mundo sic in toto universo similitudine tracta. ut inquit phi. viii. phi. et in regione naturalis corporis humani constat quod ubi nullus est humorum excessus nulla est rebellio et pugnans conseruationi naturali. ubi aut humorum excessus propter inordinatum regionem tunc pugna nature tendente in conseruationem contra excessum tendentem in destructionem et in pugna. aliquando sufficit naturalis potentia ad correctionem repugnantie. aliquando est impotens propter excessum morbi et tunc est opus extrinseco remedio. utpote medicamine sapiente naturam veneni repugnantia cum morbo. Sic indirecte in magno mundo. Nam aliquando in regione et plaga mundi nullus est rebellium excessus et tunc nulla pugna ymmo uniformiter tendit ipsius gubernatrix natura in conseruationem Aliquando est excessus rebellium tendentium in destructionem gubernationis et conseruationis et aliis placationibus et tunc non est opus bello nec medicamine venenose. Aliqui in tantum excessit morbus quod opus est medicamine venenose penitus materia morbi extirpante Et tale medicamen est bellum eradicatorium et exterminatorium malorum. Dic igitur in quo mundo recurrit propter defectum virtutis inferioris ad medicum quod equipat remedio extrinseco et venenoso. Sic in magno mundo gubernator generalis qui est altissimus creator et est medicus universi tendens in ipsius conseruationem et gubernationem cum tantum excreuerunt humores tendentes in destructionem universi vel partis eiusdem. i. vicia excessiva et ulterius importabilia respectu conseruationis

monarchie mundane ut si remedio bellico ut exterminet vicia et excessus ut discrosia reducat ad terminos temperamenti. Et sicut in corpore humano isti humorum excessus sunt circa membra singula corporis humani et etiam discrosia insurgit aliquando propter humores unius excessum quicquid alterius. Sic in universo singulas regiones et mundi plagas que sunt membra magni mundi sunt hic vicioz excessus que repugnant ipsius gubernationi et aliqui in uno aliqui in alio sunt vicioz varietates et sic contingit plagas mundi infirmari propter vicioz excessus que quicquid sic excedit quod opus est medicamine eradicatorio quo eradicantur aliquando boni cum malis sicut medicina euellit etiam mixtum bonos cum malis ymmo propter dictum excessum penitus extinguit ut mors contingit etiam in singularibus suppositis quod partes ex sensatis nam regiones infinite propter hoc sunt penitus extincte et inhabitabiles reddite. Infinita possent recitari exempla Hoc idem contingit in genealogiis et in regiminibus que etiam minui ut penitus deficient. Et licet hoc sunt dicta sic figurat tamen textibus legis diuine aptissime demonstrant. Nam ut legitur gene. xix. c. propter excessum morbi sodomie deus unus est medicamine bellico et eradicatorio per Sodomam. Sodom. Segar. et Eleale. licet dec perirent propter vicinitatem ut de pe. di. l. 6. sed continuo et. c. c. de exced. prela. et in aut. ut non luxuriarent contra naturam circa fl. coll. vii. Possent induci innumera exempla de isto etiam medicamine bellico. Josue. viii. c. Nam ibi deus noster habet ad Iechon nouum ut constituat sibi retrosum insidias et insidiantes bellatores ad insidiandum hostibus Et August. in libro quonum super vbi Josue. Iusta autem bella diffiniri solent que vicinorum iniurias et delictorum excessus. Et subdit gene. vel chutis plectenda est que vel vindicare neglexerit quod a suis improbe factum est. Subdit et hoc genus belli sine dubio iustum est quod imperat qui nouit quod cuique fieri debeat. non dicit permittit ymmo imperat. Subdit in quo bello dux exercitus vel ipse populus non tam actor belli quam minister dei iudicandus est Et sic clare demonstratur tam et medicum altissimum conseruatorem universi bella impare et eradicat. Hoc habentur transpositione xxiii. q. i. dominus noster. De hoc et bello et medicamine eradicatorio scribitur in chabeorum v. ca. et controno. cap. ii. ubi ex mandato dei filii israel bella gesserunt contra amecios quod etiam tractat anga. in libro mu. Et habetur transumptum xxiii. q. ii. ca. notandum. Sane de hoc etiam scribitur in dicam v. ca. ubi elegit dominus novum bella loquitur de his erradicantibus vicioz excessus. Scribitur etiam psal. cxx. et bellis propriis expugnabat locum ubi vicia eradicantur Scribitur etiam in 2 Machabeorum iii. ca. C6

fortissimi et bellare. Scribitur etiam per. xx. ca. dominus est mecum tanquam bellator. per amie super israheliam pulcherrime hec scribit dicens si quis fortitudinem latronis vel pirate enumerat et infirmos prodest illis suis firmitas debilitate enim membra quibus non bene membrantur a malo opere cessabunt. Conclusio est ieronimi quod sonant uiciosi si cernant moribus quo membra infecta in mali dispoebantur et hoc fit bello eradicatione. Hec habentur xxiii. q. ii. ca. si quis fortis sine hec aperte demonstratur luce vii. ad theodosium. dicit et dominus seruus qui nescit uoluntatem domini sui facit digna plagis uapulabit paucis. Seruus autem qui scit uoluntatem domini sui et non facit digna plagis uapulabit. Excedens igitur recipit plagas a domino. hec sunt transumpta xxii. q. v. ca. uindicta. Dic legitur quod elias multos affecerit morte propter manu et igne diuinitus impetrato illi regum. i. ca. et c. uindicta ubi uidetur xxiii. q. v. Sic scribitur de aliis tempore ueteris legis iiii. regum xviii. et xviii. ca. Sic scribitur quod uerbum petri apostolorum principis ananias et uxor eius tradiderunt actui iul. ca. transumptiue habetur xvii. q. i. ananias xviii. q. v. ca. uindicta in fine. De hoc bello eradicatione pulchre loquitur gregorius ad amicum dam francorum reginam sic inquit ne si quod non credimus diuine uiciorum iracundia sceleratorum sine actione commota belli pestis te terrinat quos delinquentes ad rectitudinis uiam dei precepta non renouant xxii. q. v. si quos inquit nonne dominus ad moysen maleficos non poteris uicere exodi. xxii. Moy ses etiam qui legem acceperat a domino cultores idoli dolore puniri ut exodi xxxii. ca. Samuel etiam mandato domini agne rege pinguisimum in frustra confudit et regum. xv. ca. transumpta habentur xxii. q. v. §. hinc apparet. Dominus etiam egypcios fluctibus submersit exodi xlii. ca. Israhelitarum cadauera prostrauit in heremo. nume. xlii. c. transumpta habentur xxiii. q. v. quid ergo infinita possunt super hoc demonstrando induci exempla ueteris et noue legis diuine. Sed hec sufficiunt ut ex his enumeratis sufficiat concludere bella originaliter ortus habuisse ex iure diuino et non solum dei permissione immo et positue ab ipso mundi gubernatore et medico uiciorum eradicatione propter salutem mundi conseruationes. Et cum in hunc finem tendunt bellica remedia ut supra clare dictum est. Propter hanc autem detrahiam et uiciorum multiplicatum excessus in uniuersi destructionem progredientes ex sensatis apparet altissimum creatorem temporibus retro actis et hoc eradicatione remedio usum fuisse. Nam regna et mundi regimina quam plura penitus eneruata ut quam plura remissa quid de Trojanorum assensu quid de grecorum impio quid de romanorum

uiciorum dominio partes itale temporibus nostris februnt et subiciunt examini medicina parat alicubi minor etina alicubi eradicatione exercitantes ad sanum quorum habitudines sunt fallaces iuxta doctrinam pitissimi ypoeratis et amporilinoz hanc regionem deduxit ad motum ut altissimus congruam adhibeat medicinam ut colas humores in quanto et qualia temperamento plus cum qui ex plenitudine fuerit euacuatio sanet iuxta doctrinam eiusdem. Hec autem conclusio uidelicet quod bella pueniant a deo potissime et originaliter demonstrari posset atento diuine maiestatis uniformi et perpetuo ministerio. Nam altissimus omnium creator mediante celesti machina in hanc terrestrem machinam naturaliter operatur sed supernaturaliter immediate ubi multum spirat et influat sed naturaliter loquor dictum pitissimi pbi. Primo metaphysice et philosophice esse est hunc mundum contiguum esse superioribus lationibus ut omnis uetus inde regatur. Insistit altissimus naturaliter in hoc inferiora mediante celesti et sperico corpe. Illud autem totum corpus operatur mediante motu et lumine ut inquit idem philosophus. Et quia in ipsa tota machina celesti sunt partes diuersarum virtutum influendo ut puta septem uirtutes stellarum errantium et fixarum diuersitas a quibus propter uarietatem naturalium et motuum dependet effectus omne genitum et corruptibile. Idcirco quilibet contrarietas et naturarum diuersitas et repugnantia hic inferiorum insurgens et pendens est desuper. Ex quo statim inferatur quod cum repugnantia et dissimilitudo sunt ordinatrix bellicorum seu introductoria quod bella inde oriuntur immo experientia docet quod propter uniformitatem et dissimilitatem aspectuum tempore naturae insurgunt inter homines naturales dilectioes et naturales inimicitie. Hoc quilibet experit. Nam quis diligit statum cum uiderit nullis meritis precedebat et sic odio habebit nullis de meritis precedebat. Sic inter ciuitates et villas et castra insurgunt dilectiones naturaliter propter uniformitatem et dissimilitatem aspectuum tempore constructionis earum et sic insurgunt odia et bella ex influentia celesti. Sic et amicitie et paces inter prouincias. Hec autem celestis natura mediante motu est productio generationis et corruptionis in his inferioribus augmenti et diminutionis ne dum singularia supposita immo in singulas mundi plagas. Nam ex hac superna natura plage habitabiles et econtra iuxta doctrinam philosophi ubi mare fiet aridum ubi aridum fiet mare. Ex hac naturarum repugnantia et dispositionum ex quibus rixae contentiones et bella particularia et inuicem insurgunt hec propter motum et aspectum uarietatem quodam exultat quodam extinguit et quodam depremat. Ontat mundi regia inuicem et particularia. Et hec demonstrari potest. Nam posita est

sufficiēti pductiōe alicuius effectus necesse est illam effectui pducti nō adit aliquid ex trīnecum impedimentum pductiōis. S; natura celestis pīnet dīformāl' motu 7 aspectu 7 ipsius ptes sunt dīformes ex natura sui insuādō ergo necesse est pducti hoc effectus repugnantes 7 dīformes cum non sit q' impediri posset. Et hoc inferri posset naturaliter necesse est esse bella. nec aliter pcederet naturaliter mundi gubernatio pīstīta tamen licet q' hoc celestis natura opere tur in hoc inscriptis non tamen de pīse 7 dī recto in intellectus humanum ymmo durat libertas arbitrii ut in. ca. nabuchodonosor. xxiii. q. iiii. 7 ca. de tiris 7 de pe. di. li. ca. sicut enim 7 plus in ethi. Sed operat' in oī parte uirtutem sensitiuam que recepta ista entia administrant intellectui. Et sic per in directam insuit hic est q' scribitur in libro gentium uerborum. Nōnna sapiens dominabitur astris. Sed quia hoc tractare nimis elongatur a terminis iuris non ulter' circa hanc dēductionem insito. Sed sufficiat allatum ex pīdictis 7 demonstratum bella pīuenisse a deo pīstīne 7 effectiue licet ex hoc pīstimo inferatur non in mediate machina celestis naturaliter operando. In quo scribitur pīstīne metas theoloyce in. x. ca. posse cōclūdi necessario fore malos 7 rebellos s; scribit tamen xxiii. q. v. in capite. nō solum q' bonum est esse demones quia sunt ultores ire dei in his qui malum operantur. nam per nabuchodonosor 7 per antiochum 7 per pīncipes romanorum 7 per nōnullos reges gentiliū populū israheliticū delinquentē elatissimū aliquando pūnit ut p' belle scribit ambrosius transumptus xxiii. q. v. in ca. si. Nam pīmeritis subditorum deprenatur ultor rectorum ca. si hereticus. li. q. vii. 7 in. c. l. ca. causa 7 q' uestione in v. si quid plura p' pīstīnam meam scribitur scribant doctores in ca. v. de fore cōpe. l. restant q' deus a pīncipio creauit celum 7 terram 7 omnia que in eis sunt angelicū 7 humanam naturā. spiritalia 7 nō spiritalia 7 hoc rexit p' seipsum pīcepta dedit 7 transgredienti pēnā impōsūt per seipsum scilicet ade 7 ene. pūnit char. yn 7 quodāz alios usque ad noe. tempore deus cepit regere per ministros Et noe fuit cui deus dedit gubernationem arche 7 hac rectoria successerunt pūriarche reges 7 alii deo nūi hoc darunt usq' ad Crīstū qui fuit naturalis dominus. Et in uicarium postea constituit petrum per illa uerba Tu es petrus 7 super hanc petram edificabo ecclesiā meā 7 tibi dabo clauēs regni celorum. Nota l. c. in nono xxi. di. xxiii. q. i. loquitur. Item dī dixit accipe spiritum sanctū quorum remissio peccata remittentur eis Jo. xx. c. ad dī monstrandum q' petro ut capiti seorsus dixit petre palce oīes metas io. ultimo ca. Et sic uoluit oīo deus q' petrus pīcesset omnibus 7

esset cepas et caput principum xxi. di. ce
tera que in hoc ca. dicuntur p' pīstīnam meam
mibi pībentur.

Capitulum xi.

32i secundo q' illa orta sunt
iure gentium hic tamen pīstīda
q' licet dicant iura q' bella sunt
introducenda iure gentium ut pīstīda. l. di.
has gentium 7 heremogeman' iuriscōsultus
in. l. ex hoc iure. ff. de iusti. 7 iure est credo
q' bella orta habuerint non solum ex equitate
de natura humane intelligentie 7 create
ymmo pīncipialiter ex dispositione nature
natarentis non solum influentis sup act' ha
mam ymmo sup quibuscūq' animatis 7 ēē
beatiūatis ut sit neq' dicere q' habent bella
orta a iure nālī etiam ut distinguat a iure
gentium q' qūter differant pīstīda tex. in. l. i.
5. has gentium 7. 5. has nālī 7. l. ex hoc iure
ff. de iusti. 7 iure 7 pīstīda. l. has nālī cum sua
glo. 7. c. has nālī. Quid hoc sit uerū sic ostēdit
ex pīncipis nālīs cuiuscūq' nālī creatū
est insita nālī inclinatio ad exclusionem cui
hūicūq' repugnantis sic nālī dīpōsitiōi hoc pī
inducendo in singulis naturalibus simplici
bus 7 mixtis. Nam aque insitum est igni re
sistere 7 econtr' pīpter repugnantiam qualita
tum sic in singulis elementis sic in mixtis in
duci possent bec q' pī in beatis ubi ex nālī
repugnantia complexionum ymmo inclināt
nālī ad occisionem alterius 7 econtr' sicut
in rōnālī creatura insita est inclinatio a nālī
etiam circūscripto intellectuali dictamine
ad pīstīdandū qūcūq' sibi repugnat quod
hoc sit uerū rōe pīstīda. Nam natura omniū
creaturū pīductiua non minus debuit esse sol
licita in functione rationabilis creature q' ce
terarū cum ipsa ceteris sit nobilior ut. c. cum
infirmitas de pe. 7 remissio. 7. l. i. l. i. l. i. c. c.
de sacrosanc. eccle. 7. c. bec imago. xxii. q.
v. 7. pīpter ipsam omnia infra globū lūinare
sunt pīducta ut. l. In pecudum. ff. de usui.
Si igit' natura induxit inclinationem nālī
in ceteris creaturis ad quocūq' sibi cōtraria
pīstīdanda quanto magis hoc debuit in rōnā
bili creatura hoc idem sensualliter potet per
singula supposita dīcurrēdo. Nam glōz
hoc in seipso expit si hoc ex pīncipis nālīs
hominiū insitum est ergo ex hac inclinatioe
nālī pīncipialit' habuit ortum bellum. Cum
bellum ut supia scriptum est sit contentio ex
orta pīpter tollendā repugnantiam. In
spī ergo q' illa contentio que est pīpter tol
lendā dīsonam 7 repugnantiam cōseruatōi
sue fundamentaliter habuit ortū a pīncipis
nālīs ut sic a iure nālī pūit distinguat a iur
gentium. Sed statim dices bec destruit
text' qui dicit ex iure gentiū ubi aduer
tendum q' licet a iure nālī inducā sit ista in
clīnatio nālī circūscripta nālī intelligētiā

tamen inclinatio illa regulat p dictamē rōle
 7 intelligentie naturalis sicut dicim⁹ in sin-
 gulis actibus qui debentur hominibus natu-
 raliter circumscripto intellectu utpote
 inclinatio ad cibum 7 potum 7 coptum ista
 hominibus competunt naturaliter 7 tamen
 in homine regulariter dictamine rationis qd
 non est in brutis que carent illo dictamine.
 Sic ergo credo fuisse mentem illorum tex-
 tus uidelicet qd inclinatio illius inclinatiois
 introducte a principiis naturalibus insurgit
 ex iure gentium. i. ex equitate generali ratio-
 nis intelligentie. Sed qd ipsa inclinatio sit
 de iure naturali hoc probat glo. in. Lex hoc
 iure. ff. de iusti. 7 iure 7. i. di. ius gentium.
 Nam glo. utrobique ponit sic ista uerba sic in-
 telligit de inclinatione regulata per dictam
 rationis. Et licet dicant textus qd ex iurege
 cum insurgunt bella nō tamen credo falsum
 dicere bella idest illas inclinationes. inclinatio-
 nes habere ortum a iure civili 7 a canonico
 Nam ius civile 7 ius canonicum nō dicunt
 aliam equitatem quam sit equitas iurisperiti
 am. Nam omne ius consistit in quadam rec-
 titudine 7 inde ius dictum ē ut. i. di. ius na-
 turale. Sed ius civile 7 canonicum sunt rec-
 titudo uite 7 equitas iurisperiti. Sed si
 adiungunt supra rectitudinem illam aliqualem ex-
 plicationem tunc dicitur ius civile uel canoni-
 cum. nam ius legale 7 ius canonicum habet
 specificare explicare rectitudinem 7 equita-
 tem iurisperiti quandoque eam determinā-
 do ad varios actus quandoque determinando
 per varios euentus. hec omnia probantur per
 tex. in. l. ius civile. ff. de iusti. 7 iure. Tamen
 dicit ista textus ius civile est qd nec in totus
 a naturali uel gentium iure discrepat nec p
 omnia ei seruit itaqz cum aliquid addimus l
 detrahimus iuri comuni. ius propriū. l. civile
 facimus. Est ergo uerum dicere qd bella sunt
 de iure civili 7 canonico. i. de ipsa rectitudine
 que est ius civile 7 canonicum Nec obstat
 textus statim allegati. quia illa rectitudo ni-
 hilo addito uel detracto iurisperiti nuncu-
 patur. Et sic loquitur iura statim allegata.
 Sed cum aliquid additum uel detractum ē
 tunc civile uel canonicum nuncupatur. Nul-
 li tamen dubium quoniam ius civile 7 cano-
 nicum circa bella supra dictamen ratiois ge-
 neralis aliquid addant. Ex predictis inferitur
 quo iure bella orta fuerint. Propono me⁹
 in hoc. ca. tenet qd bella orta iuncta dispositi-
 one nature naturantis nō a iure gentium Ta-
 men bar. 7 bal. 7 alii antiqui 7 moderni in
 Lex hoc iure. ff. de iusti. 7 iure tenent 7 iure
 gentium orta sunt bella per illum tex. doc. i.
 §. ius gentium. in. di. de iusti. 7 iure 7 doc. in
 ca. ius gentium. i. di. pro istis facit. nam dictō
 denotat causam i mediātā. l. i. §. si. de icēdio
 rei. nauis. sed dicitur per iuriscōsultum ex
 hoc iure gentium orta sunt bella. Ergo
 mihi uidet qd prius meus multum sapiēter

loquat⁹ magis alte aspiciendo qd iuriste 7 ca-
 noniste 7 qd. l. ex hoc iure debeat intelligi
 prout ipse intelligit al diceremus con⁹ iura
 Nam sicut comedere 7 bibere est cōe omnium
 animalium ita etiam cūilibz animali etiā bru-
 to est insita nālis inclinatio ad exclamationem
 cuiuscūqz ad expugnantis sue nāli dispositiōi
 ergo hoc non conuenit soli homini nimiz si
 non uidet pcedere ex iure gentium hz ymmo
 ex iure naturali pmeo qd hoc sit vep in bru-
 tis pbat in. l. i. §. cum arietes. ff. si quadru-
 paupie fecisse dicat.

Ca. xii.

Secundo quero quo iure licitum
 sit bellum contra infideles 7 in-
 uadere terras eoz 7 ppter hoc
 indulgentiam concedere cū iur
 Incōtrarium disponente uideant. Nā nāli
 ad nos de his qui foris sunt. ii. q. i. multi etiā
 quia origine possessiones 7 iurisdictiones sunt
 apud eos. nam deus ppter totam rōalem cre-
 aturam hec pduxit Nam apud bonos 7 ma-
 los facit solcm cori. 2. Nathe. v. 7 vi. ad finē
 etiam qui ad fidem aggregati nō sunt cū tñ
 al omnes incorporati sunt relinqndi arbitrio
 xlv. di. de iudeis ymmo qd plus est dimitti
 potest infideli iuridictio sup conuersos ad fi-
 dem dūmodo non nimis grauet Primo ad
 thimoth. vi. c. Solo ut clare liqueat est attē-
 dendum qd hic oportet pmittere que tetigi
 in materia repñaliāz in prin. l. unde etiam
 habeat iurisdictionem 7 etiam vñd Impator
 que hic ptermitto quia ibi plene tactum fuit
 Quo sic pñsupposito etiam attendendum qd in
 eadem ciuitate sub eodem rege sunt duo po-
 puli 7 fm duos populos due uite 7 fm duas
 uitas duos principat⁹ 7 fm duos principa-
 tus duplex iurisdictionis ordo. Eadem ci-
 uitas est ecclesia. Unus rex est xps. Duo po-
 puli sunt clici 7 layci. Due uite sunt spūalis
 7 carnalis. Duo principatus sacerdotum 7
 impium tamen vñm est principale. l. ponti-
 ficatus In quo sit refo alterius al friuole qd
 monstraret pñis. xii. methaphis. concludens
 vnitatem creatoris sic demōstrās multitudo
 principatum mala entia male uolunt dispō-
 vnus ergo princeps sic dicit etiam in pposi-
 to qa in quolibz entium genere est dare unus
 primum qd sit metz 7 mensura omniū alioz
 ut idem pñis sic in monarchia tota est deue-
 nire ad primum mouens immobile ut idēz pñis
 phisicōz vii. 7 viii. tale non potest esse Impi-
 am respectu pontificatus ptermitto infinitas
 super hoc allegabilia. Sufficiat ergo inerre
 qd vnus est dominus orbis vii. qd. i. in apib⁹
 ix. q. iii. cuncta per mundum 7. c. p principē
 lem. ff. ad. l. Rod. de iactu. l. de pñatio 7 iste
 est papa 7 hoc non solum sup fideles ymmo
 etiam sup infideles habet iuridictōem quod
 clarius demonstrat. Nam xps super omnes

habuit potestatem unde in psalmis. Deus iudicium tuum regi da Si xps habuit non fuisset diligens patrum. si petro constituto vicario suo curam non dimisisset quod nephas est dicere cum petro tradidit claves dicens quodcumque ligaueris. etc. Mathei xvi. et alibi pasce oves meas io. ultimo. Sic igitur papa habet de iure iurisdictionem super infideles licet de facto. Tunc est quod gentiles habentes solam legem nature peccant contra legem nature poni potuerunt per papam. Nam scribitur genensis xix. ca. quod sodomites puniti sunt a deo ergo et vicarius dei hoc poterit. Idem si colant idola. nam naturale est creatorem colere et non creaturas. Idem poterit etiam punire iudeos si faciant contra legem suam in moralibus et non puniantur a prelatibus suis. Et de christianis non est dubium quin puniri possint si faciant contra legem evangelii. Ex quibus inferitur quod papa tanquam verus princeps potest bellum indicare infidelibus et indulgentias concedere propter recuperationem terre sancte et maxime terre consecrate natalitate christi habitatione et morte eiusdem ubi non colitur christus sed machometus. Item terra sancta victa fuit post mortem christi iusto bello per Imperatorem Romanum qui post spoliatus fuit per infideles. Idcirco licitum est pape recuperare ratione principatus quod optinuit. In aliis autem terris que non sunt consecrate nec imperius nec ecclesia habuit iurisdictionem de facto potest papa facere preceptis christianos subditos aliter potest eos per sententiam privare iurisdictione sua. Et per hoc vide que ut in pluribus tractata sunt de his que non. Inno. de voto quod super his patet solutio ad primum quesitum. scilicet de iusticia belli inducti ab ecclesia contra infideles. Ex quo inferitur iustificatio belli inducti per Imperatorem contra hostes. De his que hic dicuntur per primum meum habetur in l. hostes. ff. de captivis et postliminio reuersis. sed remittit ad dicta Inno. in c. quod super his de voto. et bal. in l. ex hoc iure. ff. de iusti. et iure. Idem facit in lectura antiqua et dominus abb. et alii in c. sicut. et de iure iuran. se pariter remittit ad dicta Inno. primo non est dubium quod civitates que fuerunt sanguine christi consecrate non debent in manibus esse infidelium cum multi Imperatores acquisierant dominio christianorum propter has civitates recuperandas a papa tenentis potest bellum ibi hoc concludit tota scola iuris canonici vide bar. in l. christianis C. de paganis. deinde inno. in dicto. c. quod super his concludit quod infideles licite tenent dominia et principatus et alia bona. quod non est distinctio personarum apud deum et sine causa si debent a christianis molestari. Fateor tamen quod si infideles delinquant papa potest bellum indicare contra eos. Sed hostes tenet quod si infideles non recognoscunt dominum ecclesie licite

possunt bonis spoliari sed si recognoscant totum ecclesie et christianis non sunt infideles possent sententia tollerari. Inno. probat in c. dispar xxiii. q. viii. op. hostes. unde nona prope text. cum glo. in c. si de rebus. xxiii. q. vii. Tu pondera quod esset inconueniens quod infidelium non recognosceret et gauderet ea dignitate quod esset alicuius civitatis dominus. Nam eis interdicte sunt dignitates ut habet in l. si. C. de iudeis et ibi bar. Nullus enim potest habere iurisdictionem temporalem nisi sit christi anus bar. in rubrica de iusti. et iure glo. in l. si spadonem. §. io autem. ff. de excu. tu. Sed bene posset statim in civitatibus habere propriam et non deberent molestari sed quod possent habere aliquem principatum hoc non fateor nec aliquod dominium civitatis quia tunc haberet vim dignitatis. Pondera intantum inquit prout meus dicit quod infideles delinquentes puniuntur per papam et sic sequitur Innocentius in deo c. quod super his qui videtur totam iurisdictionem infidelium attribuisse pape quod non videtur esse nisi dominus abb. ibi. Nam etiam sunt sub romano Imperio ut. c. de iudeis et c. de paganis per totum dic quedam sunt crimina ecclesiastica et commissa per infideles et puniuntur per papam Et ut commissa sunt per eos crimina non ecclesiastica et puniuntur per Imperatorem nisi dominus abb. ibi et posset dici diuisum Imperium cum Jove celar. habet tamen per de archa. in reg. ea que in vi. quod concludit quod ecclesia debet infideles punire vide dominum abb. in c. gaudemus de diuor. vide abb. in c. de infidelibus de consang. et affini. et an papa inter laycos infideles habeat iurisdictionem vide dominum abb. in c. consulant de appel. Nam infideles immediate sunt sub temporalis domino ut per Jo. an. in dicto. c. gaudemus per abb. in c. in nonnullis de iudeis. vide abb. in c. per misericordiam de vris vide glo. in clem. prima de testibus in §. principi glo. in cle. si. de re. iudi. in vo christiani glo. si. in cle. si. de iudeis vide. c. constituit xvii. q. iiii. et ibi gl.

Ca. xiii.

Bi sciendum est quod duo sunt populi. scilicet romanus et populus christi. us. De populo romano primo oēs qui in totum obediunt Imperio romano. Nam populus accipitur per totum Imperio ut. l. roma. ad municipales. Quidam non obediunt in totum. sed in aliquibus ut qui vivunt legibus imperii et fatentur ipsum dominum orbis ut sunt civitates lombardie et similes. et isti sunt in populo romano. Nam cum in aliquibus iurisdictionem exerceat ipsam retinet ut. l. si prius de aqua plu. arcen. et ibi no. Quidam sunt populi qui nullo modo obediunt imperatori nec vivunt imperii legibus. sed dicunt hoc facere ex privilegio ut veneti qui asserunt se hoc facere ex privilegio. Et isti etiam sunt de populo romano. quod precario hoc tenent ab im-

peritiam et ipso renouare potest qui noluerit
ut. l. si quis in pira. ff. de legi. iii. Poeterea
illud privilegium eis concessum debet esse ac-
commodatum ut non piamus ciuitate romana
ff. de captiua. l. in bello. §. si quis piam. Qui
dam sunt populi qui non obediunt Imperatori
et asserunt hoc sibi competere ex contractu
ut sunt piamie romane ecclesie que asserunt
hoc sibi competere ex donatione Constantini
et aliorum Imperatorum. Et isti etiam sunt et po-
pulo romano. Nam ecclesia ibi exercet iurisdic-
tionem qui habebat Imperator vnde si desinit
propterea esse ciues romani. Idem dico et
regibus qui non fatentur se subditos impera-
tori ut rex francie Anglie Byspanie et simi-
les qui asserunt hoc sibi competere ex prin-
legio vel prescriptione. Et per hoc infero
quod omnes gentes terre que obediunt sancte ma-
tri ecclesie sic sunt de populo romano. Et
si quis diceret Imperatorem non esse domi-
num diceret contra textum euangelii. dum
dicitur exiit edictum a cesare Augusto. Pope
autem extranei sunt qui non fatentur impe-
ratorem dominum ut greci qui dicunt suum
Imperatorem esse dominum. Item tartari
qui dicunt granatorem esse dominum. Et
sarraceni qui dicunt esse sui dominum solda-
num. Inter istos tamen est differentia. Nam
quidam sunt nobis federati ut greci contra
thurcos. Quidam cum quibus habemus pa-
cem ut sunt tartari. nam mercatores nostri
vadunt ad istos et sui ad nos. Quidam sunt
cum quibus nihil facere habemus ut iudei.
Quidam sunt cum quibus guerram actuali
ut sunt sarraceni et hodie cum turcis. In-
feratur ergo quod cum principe sit secularis su-
periorum non habens in secularibus nisi for-
te ut dixi quod ipse potest indicare bellum contra
hostes suos et qui sunt post statim patuit. Et
hoc est bellum de quo loquitur. l. hostes. ff. de
captiua. et de iur. sig. l. hostes et in hoc uedi-
cat sibi locum bellum quod indicitur a popo-
lo romano ut Imperatore adeo quod si Imperator
inducat bellum ciuitatibus aliquibus italicis re-
bellibus ueniat sibi locum effectus publici
belli. quod item si repugnetur officiali impera-
tori vel pape non propter Imperatorem vel
papam. Illud uenit bar. in. l. hostes. de cap-
tione et postliminio reseruat sequitur ad quod
hic predicatur per personam meam.

Capitulum xiiii.

Et queritur quid aliis a prin-
cipe licet bellum indicare unius
sule solutio non licet sine prin-
cipis auctoritate. Nam tenet sine principio
licentia licet arma portare. ut. C. ut unus ar-
morem in rabio et nigro. et glo. in aut. et ma-
principe colla. iii. et in aut. de arma. §.
colla. vi. et est ratio nam nemo sine prin-
cipe licentia licet iura uolare. Jura principis

uoluit qui sine ulla solemnitate manu regia-
tus sibi piam ubi habetur copia ius dicitur
idcirco sine eius auctoritate non licet. Soli
ergo principi competit ius auctoritate cum
non habeat superiorem ad quem recurrat p
iusticia. Tamen quia sunt populi non
recognoscentes superiorem de facto non re-
quirunt in illis superioris auctoritatem cum non
recognoscat ymmo tota die bella indicantur
a populo contra populum nullo requisito. primo
dictum piam mei piam que uoluit oldra in co-
silio. ccc. xli. incipiente ut eius de quo queri-
tur aliquis notitia et. ubi dicitur quod sicut in
donatione facta Imperatori vel ab Imperatore si
requirit infamatio ut in aut. Idem est. C. de
dona. no. glo. in. l. piam. et. ti. Ita erit in dona-
tione regis seu alterius domini de facto tenet
locum Imperatoris in terris suis aut. d. l.
piam. uide io. an. in addic. spec. in ti. de instrum
ram editio. §. piam in ultima addic. et io. et
ymmo in. c. cum contingat de iure iuran. in
penit. certa et aliquid piam in. l. scilicet. C. et
dona. uide. c. piam venerabilem qui nulli sunt le-
gittimi uide bar. in. l. i. de decr. decu. li. x
in v. col. uide. d. abb. in. c. sup quibundam de
v. signi. in. iii. col. et scripsi multum late in
repeti. mea. l. ceteris. ff. de uolga. et pap. et c.
Et pondera quod illud quod hic dicit per personam
meam approbat p. d. abb. in. c. dicitur et. J. de
iure iuran. in. iii. col. uide de more Innoc.
in. c. olim de restit. spoli.

Ca. xv.

Lectiones quero magis bellum quod
promouet Imperator contra ecclesiam
sit iustum et tenet subditi ei in
hoc obtemperare. uide quod sic quod
sit princeps ecclesie vel mandato ergo et. Etia
quia dat iurisdictiones de iudi. c. nouit qui
sibi sunt le. c. et per venerabilem de appli-
si doctus etiam quia in pertinentibus ad ar-
moz uiam subditi debent et tenent obedire
Imperatori etiam scismatico. l. q. iii. J. et.
Solo contrarium est accipere. Nam Imperator
est aduocatus ecclesie et tenet eam defendere
idcirco non potest eam impugnare de uatis ex
libero uen. c. vno de restit. spoli. c. coequire
ymmo indicendo bellum contra ecclesiam
meret perdere privilegium indicendi bellum
cum illo abutatur. xl. q. iii. privilegium de decimis
substitutum ut piam in quo delinquit et fuf
ac. quanto. §. ne autem ymmo talis piam
in principe non distat ab offi de hereticis ex
emplificamus. l. §. i. et si no. Etia quia piam
superior est. Nam examinat Imperator ipsos
reprobos et deponit et elect. venerabile et re-
indi. ap. l. li. vi. In hoc igitur casu non
tenentur subditi iurare Imperatorem contra
ecclesiam ymmo et contra et potest papa absol-
uere eos a vinculo fidelitatis xv. q. vi. non
sanctorum et. ca. iuretos et nota de hereticis

excommunicatus. *7. de pe. c. 11.* Et quoniam a proprio modo potest Imperator inducere bellum contra papam et subditi habebant ei obedire. Dicitur secundum Jo. an. et hosti. in ca. olim Directi spoli. Dicitur Imperator est homo iniquus et peccator multas se non coarctat sed peiora committit et tandem excommunicatur per papam et omnia contempnitur et mouet bellum propter hoc contra ecclesiam et concludunt postea cum prope meo hic quod non sit iustum bellum. Unde dominus abbas in ca. sicut et. *7. de iure iuran. l. vi. col. 1.* unde totum abbat. in capitulo venit de iudic.

Ca. xvi.

Iterum queritur quid contra si papa inducat bellum contra Imperatorem scismaticum hereticum vel alias usurpantem iura et libertates ecclesiarum omnes fideles tenentur iurare papam et etiam infalli Imperatoris absolui possunt a iuramento quo tenentur vel declarari non teneri ut ca. nos sanctorum et ca. iuratos xviii. q. vi. In pondera quod idem tenet dominus abbas in ca. sicut et. *7. de iure iur. in vi. coll. unde. ca. venerabilium de electis et in ca. pro humani de homic. utque doc. in ca. ex gestis de cle. no. resi. bodie facit quod habetur in extrinseca bonifacii que incipit unum sanctum.*

Ca. xvii.

Iterum est videndum de aggeganibus et ipsam bellum peccati entibus quo ipse fieri debent. In bello sunt legio. et habet septem milia centum pedites et septingentos rix equites. Sunt cohortes et quilibet cohortes habet xx. alas. Et prima vocatur miliaria. Et habet pedites mille. Leuites cxxi. Secunda quingentaria dicitur et habet milia no. glo. ff. de his qui no. in fa. l. l. in prin. hoc legitur et dicitur et oido faciunt bellum summè do pro multitudinem apta et ad bellum perpetua non autem per extra belland. Duo tamen principaliter fundant bellum scilicet arma et vires. Hoc dividitur in tres partes. equites pedites et clancs. Nam equitibus compli clancibus mariis et fluminis. pedites colles urbes plana arbuta fruentur. Hinc inferunt quod pedites magis sunt necessarii rei publice quam equites quod possunt undique prodesse.

In pondera hoc sequitur. d. l. ii. illegat hic per prosummam meam et alii doc. et postea dicitur quod pedites et equites habet se ut excedentia excessu respectu habito ad qualitatem temporis et loci. ar. glo. l. apud antiquos. C. de fer. can. similibus. De legione unde glossa in. c. l. ne sede vocam.

Capitulum xviii.

Ilites autem in bello sic se habere debent ut seruent iuramenta quod presterint. Nam iurent se strenue omnia facturos quod precepit Imperator et nunquam deserturos militiam nec mortem recusaturos pro defensione rei publice. ff. ex quibus. ca. ma. l. pen. C. de his qui non imple. sti. l. prima libro. x. Eorum duobus debent obedire ut lege collatores in principio. Nam cum a re publica amantur et aluntur solis debent insistere utilitatibus et esse in numero milicie ut armorum quotidiano exercitio ad bella se preparent ut. l. milites. C. de re. milita. et sic debet duobus obtemperare quod si contra preceptum eorum fecerint etiam bene nobilissimas capite puniant. ff. de re. mili. l. desertorem. §. in bello. Abstinerere debent ab aggeganibus cultura animalium custodia mercatorum questu aliena non peragant negocia. Ad civiles curas non accedant alioquin militiam et eius privilegia mudabunt et de re. mili. l. nemo milites. C. de procul. l. militem. Non emant predia ubi militant et tempe quo militant nec etiam alieno non molestant. Post non inquietabunt fallit illa regula ubi fisco distrahatur eorum bona paterna et ubi ex hereditate querant hoc autem inductum est ne studio culture a militibus aduocentur hec habent. ff. de re. mili. l. milites. Pondera quod sex sunt necessaria in milite. Primo ut non sit negotiator. Item quod prestat sacramentum per gentium principis quod mortem rei publicae causa non evitabit. Item vultus ei cingat. Item stigma. L. nota publica debet esse in brachiis insigni et inscribi et poni l. iii. C. de fabricis. ite i. no. aliis pol et scribi de his per glo. in di. l. pest. et per glo. in rubrica insi. de ti. multis vide glo. pnam. li. q. l. in. c. prohibet et ea quod habet l. l. C. locasti.

Cap. xix.

De decem autem belli pertinet militibus perclisne comitatum dare equos militares extra provisionem duci non permittit milites in castris retinere ad armorum exercitationem perducere ad opus priusquam piscati venatum non mittere clancs postquam suscipere vigilias circuire instrumentationi comitatum interesse frumentum mensure frunde coercere delicta castigare querelas comitatum audire valitudinarios inspicere. Hoc habent in l. officium. ff. de re. milita. Ad eius etiam pertinet officium in virentis fluminis ripas legionem ponere. Et ut omnino nullus aequum pollent ne ut ablucendo quoniam fudorem publicos oculos maculet sed procul in interioribus partibus fluminis id facere permittat. Hoc habent. C. de re. mili. l. ingentio

Ad ipsius etiam officium pertinet castra ponere ubi lignorum pabuli aque copia habet et ut diutius commorandus sit loci salubritas eligatur in re sit uicinus aut altior locus qui ab aduersariis captus possit efficere. Considerandum etiam ne torrentibus inuadari consueuerit campus hoc vegetius de re mili. l. i. c. xx. Ad eius etiam officium pertinet finemque militum castramentari castra ne maior multitudo constipet nec ne paucitas in latioribus ultra quam oportet rogat extendi. Ad bonum etiam ducem pertinet in quo loco dimicandam est nocere qui quanto superior fuerit utilior iudicat quam si uictoriae et perditio sperat contra milites hostium loca in equalia aspera montuosa debet eligere. Sin autem contra loca plana potentia neque siluis neque paludibus impedita. hec uegetius l. iii. e. xiii. de re mili. Hoc ad officium ducis pertinent ad specialem magisterium militum ut l. magisterie. C. de iure om. iudi. et l. i. cola. de re mili. Pondera quod etiam dux debet omnia que sunt in bello que sunt causa uoluptatis ordinata auferre ut peregit publius cornelius stipio. et alii imperatores efficiantur dari et non delicti ut nostris legitur in historiis maxime in ualerio in. ca. de militari disciplina. Circa multa enim debet esse doctus imperator hostes ferire. praedia agitare nihil metare nisi turpem famem hyemes et estatem iuxta patii humi requiescere eodem in tempore in opus et laborem tollerare per salustum in gurgitio In primis imperator sciencia rei militaris debet pollere cicero in oratione pro pompeio Unde uegetius de re militari dicit nullus est quem oporteat uel plura uel meliora scire quam imperatorem Cuius doctrina debet omnibus prodesse subiectis. Nam turpe est patricio uiro ignorare ius in quo uersetur. l. ii. §. serui autem sulphicius. ff. de origine iuris debet esse litteratus. Nam solitus est dicere Cato quod plus rei publice prodest qui disciplinam militare confert cum liberis. Nam secundum uegetium xlii. ca. iii. libri bonum imperatorem conuenit nocere ipsum locum in quo dimicandum est. Et alia uide de quibus ibi. Item cicero in oratione pompeiana sic loquitur uirtutes impatorie uulgo esse existimantur sed labor in negotiis fortitudo in periculis. industria in agendo. celeritas in confitendo consilium in prouidendo.

Capitulum xx.

Alie autem puniuntur milites ut uarie delinquit. nam ut committunt delicta propria aut coia Et in propriis puniuntur pena militari et ager pena gradu sepe milicie ut. l. ii. ff. de re milita. Punitiones autem sunt pecuniarum castigatio. Inuiolentorum interdictio ignominie missio ab exercitu missio gradus

deiectio. In metallum autem uel opus metalli non deputat sed decapitatur non enim pro milite sed pro hoste reputatur. ff. de re mili. l. ii. §. i. et §. is qui. et l. i. peditores. Capite autem puniuntur qui proposito manus intulerit qui inobedientes fuerint qui spectantibus ceteris prior fugas arripuerit exploratores qui secreta nuntiant hostibus qui meta hostium inimitatem simulant qui comilitones gladio uulnerauit qui sine causa se uulnerauit uel mortem sibi consciauit secus si uite radio uel doloris in patientia. Nam tales infamia non debent puniri. Per vinum autem aut per lasciuia lapsus militis mutat qui non defendit propositum suum cum potuit capite puniri qui non potuit et pascitur. Hec habetur. ff. de re mili. l. omne delictum et l. iii. §. si. Item qui exploratore obuiauit hostibus insistentibus aut de fossa toto recedit capite puniuntur etiam si rem bene gesserit. ff. de re mili. l. iii. Item si cocitauit atrocem seditionem desertor tempore belli capite puniuntur tempore pacis equis gradu repellit pedes militiam mutat. ff. de re milita. l. non omnes Tamen desertores puniendi sunt et qualiter haberi debet ratio gradus ordinis stipendiorum et aliarum circumstantiarum qui excessit pascui comeatus ut emanator uel desertor reputatur habet tamen rationem quibus tardius uel citius rediit uel si implemento aliquo. ff. de re mili. l. iii. §. si. et l. i. qui comeat et l. non omnes. Habet etiam rationem ante actum uite. Emanator est qui diu vagatus a castris ad ipsa rediit desertor qui plerumque tempus vagatus ad castra reducit. l. iii. remanator. ff. de desertor si in urbe inueniatur capite puniuntur alibi si ex prima defectione captus iterato deserat capite puniuntur. ff. e. ti. l. non omnes desertorum defectorum bona confiscantur. C. de re mili. Pondera quod alienasse arma graue est crimen et simile est defectioni et hac si omnia arma alienauit. Si uero tibiale uel humerale alienauit. uerbis cedendus est. Si uolontariam scutum et gladium desertori ipse est similis. l. qui cometus spadium. ff. de re militari. In omnibus que hic dicuntur per pauum meum. Parcendum tamen est tironibus. l. iii. §. si plures. ff. e. ti. et l. i. qui cum uno. §. si. e. ti. iterato delinquit et c. ut ibi.

Cap. xxi.

Ad quia dictum est super in. c. xvi. preterito ibi ulterius est uidendus de aggregatibus et c. in fine cap. quod fortitudo uel uires et arma fiunt bellum principaliter et quia in iure non discutitur natura fortitudinis explicite expedit quod ipsius natura aliquantulum explicetur et per modicas questiones cum quibus eius natura concludatur. Et quero primo an fortitudo sit uirtus moralis et appareat quod non Nam fortitudo est dispositio corporalis ut. l. i.

C. de athlet. li. xii. de his q no. infra. l. athlete ff. ad. l. aquil. qua actione. §. si quis in collatione de pug. in duello. per totum. C. de gladiato. l. i. ergo non est uirtus moralis cui dispositio corporalis differat ab habitu seu dispositione anime et sic inferior gradu. de de peni et remiss. l. cum infirmitas. xii. q. i. precipimus. xxiii. q. iiii. si habes. C. de sacrosanct. eccle. l. sanctissimus. Secundo sic omnis uirtus moralis est coniectrix in passionibus et operationibus ut probat philosophus in ethicis. Sed fortitudo est coniectrix in medio ut idem philosophus. ergo. Tercio sic quod non est una uirtus. non est uirtus immo uirtutes. quia pluralis locutio ad minus duorum numero est contenta. ff. de testi. l. ubi numerus et regula pluralis. de regu. iur. li. vi. Et confirmatur per dictum philosophum primo elencorum. Nam eadem est definitio proportionis et unius propositionis quod fortitudo non sit una uirtus probat hic minor. nam una uirtus opponitur duobus uiciis extremis ut xli. di. lepe de consue. ex parte. Sed fortitudini opponuntur quatuor extrema scilicet intimiditas et timitas timor et audacia. et defectus in audendo qui est ignorantia ut probat textus in ethicis. Oppositum probat philosophus in ethicis. Pro solutione questionis est aduertendum quod fortitudo sumitur equiuoce pro fortitudine que idem est quod robor corporis et fortitudine que est uirtus moralis. prima est potentia quod quis potest mouere ut probat philosophus primo rethor. et utraqque reperitur in bello et sic sumpta fuit generaliter cum dixi quod fortitudo seu uires et arma fundant bellum cum utraqque requiratur sed de prima que est robor corporis non est dubium quod non est uirtus moralis per supra allegata. Sed de secunda procedit quod et illa est uirtus secundum quam nos bene habemus circa timorem et audaciam in bellicis periculis et de ista prosequamur quia prima est plana in modis et temporibus. Pro intellectu autem fortitudinis anime est attendendum quod in audendo et timendo contingit exerce et deficere et utrobique male agere.

Contingit et medie se habere et sic uirtuose. Differt tamen audacia a timore. Nam audacia est passio appetitus irrationabilis secundum quem inclinamus ad aggrediendum terribilia. Timor inclinat ad fugiendum et quod libet experitur in seipso. sed utraqque contingit bene agere et male. Nam si quis uideret decem armatos et solos aggredere eos. male circa aggressuram et male circa timorem ageret. Sic etiam in timendo quis excedere potest ut exemplum si sint centum homines inaguit et non uideant nisi centum et fugiit male casus. Sic etiam non aggrediendo ut si uiderit spoliarie ciuitates si non aggrediatur male agit. Et sic uidetur excessum in non timendo cum expedit. in timendo cum expedit. in aggrediendo cum non expedit et non aggrediendo cum expedit. Et sic habes uicia extrema audacia et

timorem et utrobique gradum ut supra. Alterius est notandum quod ubique est repere excessum extremorum uiciorum et vituperabilem ibi est reperire medium bonum et laudabilem quasi esset totum malum et vituperabile. Nam posset dici quod defectus est vituperabilis. Nam defectus diceret defectus mali et sic non foret malus. Expedit igitur quod in medio sit bonum cuius respectu unum dicat malum excedendo aliud deficiendo. Ex his inferuntur due questiones seu due conclusiones per solutionem quodammodo. Prima quod fortitudo anime est uirtus moralis. Secunda quod est una uirtus probatur prima. Nam omnia habitus electus medii laudabilis est uirtus moralis sed fortitudo est huiusmodi ergo probatur maior per locum a diffinitione que argumentatio est valida in iure. ff. de reg. iur. ff. de polli. l. i. in prin. et l. bona fides. e. ti. Sic autem diffinit philosophus uirtutem moralem finem ethici. probatur minor. Nam fortitudo est habitus intellectus medii circa timorem et audaciam ut probatur philosophus in ethicis. Confirmatur illa est uirtus moralis que generatur in nobis in more idest consuetudine et hec appellatur moralis. Fortitudo est huiusmodi ergo et probatur maior per locum a causa formali que argumentatio est valida in iure. ff. ad. l. fal. l. si is qui quadraginta. §. quedam. ff. loca. l. rei. §. ope. ff. de signi. l. edificia. §. perfectissime et l. quod forma e. ti. l. q. i. detraxit de bapti. debitum. Probat minor. Nam in actu bellico propter pericula appetitus sensitiuus inclinat hominem ad fugam ut dicit philosophus ubi in bellicis vendicat sibi locum ita et ad ea que sunt impetuosa et sic nos inclinat ad extrema uiciosa uirtus autem que est promptitudo appetitus rationalis inclinat ad medium et illa promptitudo generatur ex actibus iteratis alias non delectabilem operari et sic non esset uirtus cum in uirtuoso nulla debet esse appetitus repugnantia ut idem philosophus secundo ethici. et patet prima conclusio videlicet quod est uirtus moralis. Secunda conclusio est quod est una uirtus. Quidam hoc sic probant. Timor et audacia sunt passionibus contrarie fortitudo est uirtus media ergo est tantum una consequentia probatur. Nam unum quod quod agens intendens ad argumentum unius contrariorum tendit ad remissionem alterius et sic uirtus minuens timorem auget contrarium et contra. Confirmatur uirtutes morales specificantur a fine. Sed unicus est finis ergo unica est uirtus. Primum patet per locum a finali quod est ualidum in iure a. l. vnus. §. si fuus. ff. de consti. l. ultima. ff. de decur. l. generaliter. C. de epi. et cleri. xvi. q. i. c. cum cessante de appel. et c. et si christus de iure iur. per secundum. Nam finis fortitudinis in bellicis est bonum corpori et si alio bellat propter lucrum non est fortis immo auarus. Alii dicunt aliter uidelicet quod timor et audacia non sunt passionibus contrarie hoc probatur sic. Timor et audacia se compatiuntur in eodem respectu cuius

dem ergo non sunt contraria tenet sequentia
q: posito uno contrarium remouetur reli-
qui. ff. de insti. l. sed si pupillus. §. si infito-
ria. ff. de regu. iur. l. ius nostrum. 1. l. hec v-
ba. ff. de verbo. sig. in auc. de man. §. si. col. iii
xxii. di. hospitium cum si. Deimam patz
nam quis propter bonum honestum bellare
sed timet propter dampnum etiam quis agere
dicitur 1 sic audacia. 1 non timet ne ledatur
1 timor. Et sic ista opi. est contra textus pbi
secundo retho. nec ualet ipsorum ratio. nam
delegatio 1 tristitia secundum omnes sunt
contraria 1 tamen idem delectari potest 1 tri-
stari circa eundem actum. tolle in adulterio
delectatur propter sensualitatem. Et sic de p-
bitione merces in mari propter tempesta-
tem. Sic in proposito quis tunc propter ma-
lum pacens audet propter spem. Deimam
igitur opi. uerior. unde albertus tenet q: licet
sint quatuor extrema ut supra non tamen sint
nisi duplices. nam quicunq: inclinatur ad be-
ne audendum non timet. Et quicunq: non in-
clinatur ad bene audendum non audet. 1 sic
insert unicam uirtutem. Illi dicunt q: si
sunt nisi duo extrema. Nam si aliquis nihil ti-
met nihil audet. Et sic timor 1 audacia faci-
unt sic unum extremum q: sufficit expedi-
ctis concludere q: fortitudo que est uirtus pri-
cipale fundans bellum ut sumitur pro corpo-
ris robore non est uirtus moralis. sed ut su-
mitur pro uirtute anime 1 uirtus moralis est
una. Et hec est ista que bellum ad finem tñ
producit. Pondera q: an fortitudo sit uir-
tus moralis tangit pbi. optime in iii. et bco.
Et de fortitudine uide tulum li. i. de officio
in ca. in quo de ea tractat quod quidam ca.
facipit intelligendum est autem cum propo-
sita sint genera quatuor. unde sanctum tho-
mam in secunda secunde questione cxxiii. p-
totum 1 theologi in iii. sententiarum di. xxiii.

Capitulum xxii.

Ilum est de fortitudine que fun-
dant bellum principaliter que ē
uirtus moralis 1 una. Sed quia
tractatum dirigo ad Cardinale
Quero utrum hec sit cardinalis apparet q: si
nam magnanimitas nō est uirtus cardinalis
ergo nec fortitudo tenet consequentia per lo-
cum a maiori qui est ualidus in iure ut leg. i.
C. de neg. gest. ff. de senato. l. qui in digna. C.
de sacro. sanc. eccl. aut. multo magis solma.
l. ex diuerso. §. i. C. de epi. 1 de l. si qua p ca-
lumpniam xxii. q. v. ff. paulus viii. q. i. si er-
go. vi. q. i. in mare xl. di. quilibet de elect. ci
in cunctis. Sed magis uidetur inesse q: ma-
gnanimitas sit uirtus moralis q: fortitudo qz
nobilior 1 maior ut dicit pbi in et bco tra-
ctata de magnitudine. potest primo uidelicet
q: magnanimitas non sit cardinalis qz tunc
cardinales forent plures iiii. Solutio sic to

ta humana conuersatio non uersatur circa
fortitudinem ut cardine. ergo non est cardis
ilis q: inde cardinalis nuncupatur. tenet cō-
sequentia per locum ab et bco. qz est na-
lidus in iure. ff. si cor. pe. l. ii. §. appellata in
pbeo. ff. §. discipuli. C. de epi. 1 clerici. Dece-
nim. ff. §. nec. sig. l. tigurii. c. c. 1 l. libeornz
§. q: si papi. xxii. di. clerici. xvi. q. i. si cap.
1. c. cum fm de p. au. patet primum. Nam
fortitudo uersatur solum circa picula bellica.
Sed pauci dicunt uirtutem suam cum bellicis
piculis ergo. In contrarium apparet auc-
toritate cōmuniter loquentium qui istam po-
nunt in numero cardinalium inter quos est
seneca qui sic tractatum specialem 1 tuli-
in rethoricis diligebat uirtutes in bas. iiii.
cardiales 1 hec ar. ab auctoritate est ualida
in iure. C. de sima tri. 1 fide catho. epla iter
claras. C. de bo. qz li. i. ci. mlti. ff. de re. di. l. i.
tituli. §. synotopi. Pondera q: si uirtutes
his quatuor principalibus satis pbele tractat
li. i. officiorum sit mentio per glo. in cle. i. de
summa trini. 1 fide catho. 1 subdit ibi que
dicantur uirtutes theologice 1 pondera Ci-
ceronem in li. iii. rethorice ad extremum
ubi tractat quid sit prudentia iustitia forti-
tudo 1 modestia. Nam prudentia est callidi-
tas que rōe quadam potest delectum habere
bonorum 1 malorum 1 appellat prudentia
multarum rerum memoria 1 uis plurius ne-
gociorum iustitia est equitas has unicuique
tribuens fortitudo est rerum magnarum ap-
petitio 1 rerum humilium contentio 1 labo-
ris cum utilitatis rōe perpēso. Modestia ē
in animo continens moderatio cupiditatum
1 de his etiam habet in. c. ex ble. xxviii. q. ii
vide glo. in aut. ut omnes obediant iudicibus
in prin. Et pondera quid sit uirtus qua uir-
est habitus electus fm pbi ut refert hic
proanus meas. Nam uirtus est que habente
proficit 1 opus eius bonum reddit fm pbi
glo. ff. in cle. prima de summa trini. 1 fide ca-
tho. Sed Cicero hoc scdo antiquorum retho-
ricorum dicit q: uirtus est animi habitus natu-
modo atq: rōi contentanens 1 habet quatuor
ptes. i. prudentiam iustitiam fortitudinem 1
temperantiam 1 diffinit singulariter eas 1 po-
nit earum ptes. Dicunt enim uirtutes quasi
uiram tuētes 1 seruantes a uiciis fm glo.
in cle. prima de summa trini. 1 fide catho.
Et pondera q: uirtus aliqui capitur p fine ut
habet in. l. legis uirtus. ff. de legibus

Capitulum xxiii.

Ro uidetur 1 soloe qōis primo
est uidendum unde 1 quare uir-
tutes dicantur Cardinales Ubi
sciedam fm alberti q: sicut car-
dines celi sunt poli uidelicet antarcticus 1 ar-
cticus super quibus mouetur celus 1 cardines
hostiorum 1 portarum super quibus reuolu-
ntur

tur. Sic a simili virtutes ille dicantur cardinales super quibus versatur tota conversatio humana et quas et si quis habet dicitur simpliciter bonus et in ipsis non. Sic etiam domini cardinales inde iudicio meo nomen supererant. nam ipsi sunt mundi cardines quibus tota mundi gubernatio revolvitur et fingitur et ad ipsos spectat sustentare totum pondus mobilis gubernationis et motum ipsius fixum pacificare sumentem duobus polis numero contenta est celestis machina et sufficienter stabiles. firmiter ordinem motus non deiciant a loco fixationis humani generis monastica gubernatio quatuor cardinalibus suis contenta et sufficit. Si inde unde numerus unde varietas unde infirmitas unde tanta a centro distantia a tanta super dicimus eam non est nomen arbitrii. Sed quod de cardinalatu dixi in tractatu de ecclesiastica censura nunc pertransio ut reddam ut dicam principaliter positam. Et quod iure ut dixi non plene explicatur ad plenum naturalium aliquantulum succincte propter fortitudinem explicandorum de eo tractabo.

Capitulum xxiii.

Sciendum est ergo quod ut dicit philosophus virtus est habitus electivus ut idem philosophus asserit secundo ethicorum omne quod est cadit sub electione et eligibile est triplex de triplici specie bene proveniens videlicet bonum utile bonum delectabile et bonum honestum. Et ista sunt per electionem appetibilia et fugibilia et omnes virtutes morales circa ista tria versantur.

Explicemus unum quodque. Et primi bonum utile circa quod versatur virtus altero de tribus modis aut expendendo aut accipiendo aut conservando. Plures actus electionis non experitur homo in seipso et ista obductio ab experientia valida est in iure et probatur in probemio. ff. circa poen. in aut ob monac. circa poen. ff. de le. iii. l. si bonus. §. bis verbis et de veteri iure enucle. l. ii. §. que oia de elect. §. sit li. vi. Si expendendo hoc contingit dupliciter. Aut enim expendit sua aut aliena. Si expendit sua tunc circa ista expendendo virtus liberalitatis et magnificentie. vicia opposita scilicet avaritia et prodigalitas peruersificentie et beneficentie. Sin autem non sunt sua tunc potest distribuere illis quorum sunt et tunc est iusticia ut. ff. de iusti. et iure. l. iusticia et iusti. e. §. iusticia. xi. q. ii. cui deuotissima. Aut distribuit illis quorum non sunt et tunc est in iusticia ut in iuribus stati allegatis a contrario quod est validum argumentum ut. l. i. §. holas rei. ff. de offi. ci. cui man. est iur. l. i. per procuratorem. §. ignorantes. ff. de mandati. l. c. cum applicam de his que sunt a p. et c. ci iuri. ob com. iura. i. non reddendo illis quorum sunt homo dicitur sim-

pliciter malus xxiii. q. vi. li. res de usuris ci. tu. ff. de usur. l. sequit. §. q. an patet quod iusticia est cardinalis quia non habendo ipsam circa distributionem eorum que sua non sunt homo est simpliciter malus. Sed libertas et magnificencia que consistunt circa distributiones eorum que sunt sua non sunt sua non sunt cardinales quia quia male distribuendo sua non est simpliciter malus sed bene dicitur fatuus. et sic habes unam cardinalem. i. iusticia circa expeditionem inutilis boni. Sin autem virtus moralis versatur circa annuum utile in accipiendo hoc contingit dupliciter. Nam aut accipit que sua sunt vel debita vel aliena et sibi non debita. Et si sua vel sibi debita et a quibus non debet petat contra liberalitatem magnificenciam. Non tamen est simpliciter malus. hinc est quod contra talem sunt iuris remedia introducta unde vi. vi. bo. rap. ff. et c. per illos titulos furti. et de condic. ex. l. et canonibus qui in singulis casibus explicantur secundum varietatem actuum et sic per explicationem unius si actus exceptio circa boni utile appetit quod iustitia obtinet cardinalitatem non autem liberalitas sine magnificencia cum per oppositum iustitie dicatur simpliciter malus non autem per oppositum liberalitatis vel magnificencie. Sin autem versatur virtus moralis in retinendo boni utile hoc etiam contingit dupliciter. Aut retinet et conservat sua aut retinet aliena. primo casu retinendo que sua sunt et nulli dando perdet contra liberalitatem et magnificenciam nec talis est simpliciter malus. Et si infestus Si dives viderit pauperem indigentem ad mortem et nihil det peccat mortaliter risderi potest quod tunc retinet non proprium sed comitem tempe talis necessitatis sit scienda promissio ut probat clemens sex responsibus. xi. q. i. dilectissimus et aug. ut transmittit viii. di. quo iur. §. i. Sin autem quis retinet aliena simpliciter est malus et iniustus appellatur si iniusto domino retineat et prodica sunt remedia iuris de quibus. Circa igitur bonum utile elicio unquam bonam solum scilicet virtutem cardinalem tam in distribuendo quam in accipiendo quam etiam conservando quia per ipsam oppositus homo est simpliciter malus alie autem non sunt cardinales quia per earum oppositum homo non est simpliciter malus. Cardinalis est iustitia non cardinales sunt liberalitas et magnificencia et hoc clarum. Dicam igitur quod hoc erat secundum bonum delectabile circa quod versatur virtus moralis et circa hoc versatur virtus moralis et circa hoc versatur dupliciter aut largiendo sicut sunt virtutes que sunt in ludis et cum aliquis largitur aliis delectationem habet. Et bulismodi sunt amici cilia affabilitas et eutropias. Iste autem virtutes non sunt cardinales quia non sunt de necessitate humane nature quia multi sunt magni et virtuosus qui in talibus nesciunt se habere. Quin autem suscipiendo et hoc dupliciter. Aut enim versatur principaliter circa delectabile

tunc dicitur simpliciter et appellatur in temperantia. et dico se male habere excludendo. nam insensibile qui non delectatur non est simpliciter malus sed excedens sic habes temperantiam que optinet cardinalium quod per eius oppositum quis simpliciter est malus. Et est de necessitate humane conservationis. Sin autem ueretur simpliciter circa tristabile. et hoc dupliciter. nam est quoddam tristabile quod aptum est mouere ad iram et tunc ueretur manifestatio hec non est cardinalis. quod non est necessarium si quis irascatur per actum remittitur quo minus transeat ad actum secundum exteriorem iusticie. sin autem tristabile sit ad actum exteriorum non diceretur iusticia. Sin autem est tristabile quod est aptum mouere ad timorem et tunc est fortitudo. Nam sicut ille est simpliciter malus qui uult substinere terribile propter bonum fortitutum. Et sic fortitudo est uirtus cardinalis et hec de bono delectabili. Dicebam ulterius quod est bonum tertium scilicet honestum. Et tale est triplex quoddam pertinet ad uirtutem cognoscitivam. Et hec sunt uirtutes intellectuales. et hec sunt scientia. sapientia. intellectus. ars. et prudentia. Quoddam pertinet ad uirtutem interpretatiuam ut ueracitas et falsitas. Quoddam pertinet ad uirtutem appetitiuam. Capimus secundum membra scilicet pertinens ad uirtutem interpretatiuam et dico quod ista ueracitas spectans ad uirtutem interpretatiuam non est uirtus cardinalis quod non reddit hominem simpliciter bonum nec eius uicia simpliciter mala et cui uicini magis oppositum est iactantia. Sed iactator est triplex. Est enim iactator simplex iste est gratia delectationis. alter honoris alter gratia lucri. sola prima iactantia opponitur directe ueracitati. Alie autem ingrediuntur aliam speciem uicii nam primus solum spectat quod mendax. sed mendacium est duplex nam est mendacium quod est simplex falsa significatio uocis. et de illo dixi quod directe opponitur ueracitati. Aliud est falsa significatio uocis cum intentione fallendi. Et illud facit hominem simpliciter malum et incidit in speciem iusticie. Et hoc et alias species mendaciorum persequitur aug. in illis mendaciorum transumptiue habetur xxii. q. ii. ca. primum capitale. Aliud est ut dixi bonum honestum pertinens ad uirtutem appetitiuam. et hoc dupliciter. aut essentialiter et tunc sunt uirtutes morales de quibus super tractatum est. Aut significanter et talia sunt honor laus bona terrena. Et circa istud bonum honestum est magnanimitas. et tales non sunt uirtutes cardinales. Nam multi sunt uirtuosi qui etiam non appetunt honores quibus sunt digni. Sin autem loquamur de bono honesto quod spectat ad uirtutem cognoscitivam. Tunc sunt uirtutes intellectuales ut scientia. intellectus ars et prudentia. Primum tres non Cardinales ga-

non sunt de necessitate uite humane. Sed prudentia est de necessitate boni ymmo im. possibile est aliquem esse uirtuosum sine prudentia. Nam prudentia regulat ceteras uirtutes. Ex his infert qualiter fortitudo propter quam fit finis est uirtus cardinalis et apparet quater quatuor sunt elicitur ex triplici bono appetibili et frangibili triplici uirtute anime. Prime nostre. scilicet iusticia temperantia fortitudo et prudentia que nedum Cardinales sed ymmo inter ceteras obtinet papatum et principatum fit aliquis discursio sed sic supportat. quis non deputari iustitiam pronunciat aliter explicare naturam fortitudinis de qua est principalis finis.

Cap. xxv.

Consequenter queritur An aliquis possit dici fortis etiam si non sinit exercitatus circa pericula mortis in bello apparet quod sic. Nam fortitudo est necessaria bonitati humane cuius fit cardinalis ut super prima questione quod bonitas humana haberi potest sine exercitio bellico ergo consequentia probatur a contrariis ff. de neg. gest. l. et qui natura. iiii. di. denique. vidi nunc de superfluitate. Primum patet per nota. 3. prima questione. Item Tullius dicit quod fortitudo est considerata periculorum susceptio et laborum pressio. Hoc autem potest esse sine bellico actu ergo probatur consequentia per locum a sequenti destructo quod est ualidum in iure argumentum. ff. si cer. pe. l. ii. §. ii. l. C. de furt. l. apud antiquos v. qm. ff. de in inte. resti. l. non videtur. Oppositum dicit philosophus iiii. ethicorum quod propterea hoc continetur in sacramento militis cum accingitur non cui tunc mortem. l. p. ff. ex qui. ca. ma. et l. i. C. de his que non imple. stip. l. i. l. xi. Duo solent questionis est attendendum quod fortitudo sumitur generaliter per omni firmitate animi. Et hec est generalis ad omnes uirtutes. Nam animi inconstantia vituperatur et iure reprobatum. xxii. q. v. horrendas de iure iurā. quem admodum. ff. de adult. l. si messor. ff. de decur. l. p. ff. de neg. gest. l. p. p. Regula quod melius et regula mutare de reg. iur. li. vi. Et hoc modo foret dubium quando talis possit esse sine periculo bellico. Sumitur etiam stricte prout uirtus specialis que est inclinatio ad aggrediendum et expectandum pericula pro fugiendo malum culpe unde triplex est malum nocivum quod apponit ut illi triste quod apponitur delectabili turpi quod apponitur honesto bonis autem anime quod est honestum est per se diuino bono utili et delectabili sicut anima rationalis preferenda est corpori. xii. q. i. p. p. p. xiii. q. iiii. si habes. C. de sac. sanc. eccle. sanc. cim. de peni. et remis. c. c. i. firmitas. Ex hoc infertur quod sunt tres uirtutes morales necessarie ad hoc ut quis dicatur bonus uirtuosus una que perfigat animum ad preferendum bo-

nam bonum nulli. Et hec est iusticia. ff. de in
 sti. et iure. l. iusticia iusti. c. §. iusticia xii. q.
 li. cum denotissima. Alia firmans animas ad
 preferendum bonum et bonum delectabili et
 hec est temperantia ut vi. disti. sed penlandus
 est palam de consuet. nam cōcupiscentiā. Alia
 firmans animum ad sustinendum passiones q̄
 incurrendum mali culpe et hec est fortitudo
 C. de athlet. l. i. l. x. C. de his que non imple.
 stipen. l. i. vii. q. i. §. hinc etiam et hec fortitu
 do de qua est sermo. Et merito hec dicuntur
 cardinales q̄ sunt de necessitate beatitudinis hu
 mane et quilibet istarum custodit seipsum. et
 quilibet aliarum tolle vel tollit exemplum.
 mulier temptata de adulterio per promissio
 nis se defendit per temperantiam. ff. de ritu.
 nupt. l. palam si temptetur per terrorem ab
 isto se defendit per fortitudinem xxxii. q. v.
 lucretia et ca. fieri. et ca. finge. xxxiii. q. i. nō
 satis. Si autem temptetur per munera ab
 ista se defendit per iusticiam xii. q. ii. cum v̄
 notissimam. Potest etiam exemplificari
 fortitudine. nam si propter timorem dubitat
 ab ista se defendit propter fortitudinem ut i
 ca. lucretia et ca. finge xxxii. q. v. Si tē
 ptatur per delectabilia tunc descendit per
 temperantiam xii. q. v. non pōt et cap. nec
 solo. et ca. qui uiderit et nō machaberis. Si
 propter munera tunc defendit iusticia q̄ in
 istam est defendere bonum honestum cāp̄ spi
 rituale. l. q. i. quā pie. de symonia per totum
 Si falsis rationibus tunc defendit se prudē
 cia et sic una cardinalium format animum ut
 preferatur bonum honestum utili ut iusticia.
 Alia ut preferatur delectabili ut temperantia
 Alia ad sustinendam propter bonum tuen
 dum et malum culpe excludendum ut forti
 tudo. providentia autem ceteras regulat sic
 debet esse in cardinalibus.

Capitulum xxvi.

Iterius est sciendum q̄ bellum
 sumitur dupliciter uno modo p
 actu bellandi binc inde ut sumi
 tur. ff. de captivis et postli. rev.
 l. in bello et l. postliminiuz. C. de gladiis. l. una
 li. xi. Alio modo sumitur pro qualibet expec
 tatione corporalis periculi etiam si non sic ac
 tualis in usso et hoc si periculi esset cui pos
 sit verisimiliter resisti alias non esset bellum
 ut in latrone suspendendo et alio iustifican
 do. Si bellum accipitur pro actuali inuasi
 one binc inde facta fortitudo non est solum
 circa illa pericula. q̄ tunc non esset cardina
 lis cum multi sunt uirtuosi qui in talibus ex
 ercitati non sunt. Si autem sumatur se
 cundo modo tunc fortitudo uersatur circa
 ista pericula generaliter sicut dicimus i muli
 ere que sustinet pericula propter cultiones
 castitatis. i. non est bellum primo modo sum
 ptum sed secundo sic et tamen est fortitudo.

Notandum tamen q̄ fortitudo non est circa
 quodlibet bellica pericula. Nam si aliquis inu
 dit aliquem et defendit se non est fortis quia
 tunc canis esset fortis fortitudine. s̄ q̄ sub
 stinet pericula bellica ppter causam mali culpe
 et est fortis unde dicit p̄bis q̄ non est fortis
 propter necessitatem binc etiam cas. xxxiii. q.
 liii. Nabuchodonosor et c. de tris de pe. di.
 li. Sic enim tunc concludit solo questio
 nis proposita cum querit an fortitudo sit cir
 ca pericula mortis et bellica et dicendum est q̄
 non ut exemplum est in muliere. Secundo
 modo q̄ extremus actus fortitudinis sit cir
 ca mortis pericula videtur q̄ sic quia v̄tus est
 circa difficile. Tertio mō q̄ inclinatur ad susti
 nendum mortis pericula si casus occurrat di
 cendum q̄ sic et extēditur circa ultimas po
 tentie primo celli et mundi. Pondera in quo
 dicit q̄ circa mortis periculum est actus extre
 mus fortitudinis. Nam mors constantissimos
 teret animos et est p̄p̄ta passio in rerū fortib
 et ultimum terribilium fin p̄bium et vide p̄bium
 tertio et chorin dum dixit fortitudo est ag
 gressio terribilium ubi mors imminet propter
 bonum cōmune saluandum. Et pōdera q̄
 dñs p̄mus meus sapienter loquit more suo
 dum dicit secundo modo inclinatur ad susti
 nendum mortis periculum si casus occurrat.
 Pondera verbum si casus occurrat si trade
 ret se quisquam morti ut se ostenderet fortem
 non esset fortis ut antiqui faciebant quia ad
 hoc ut fortitudo sit v̄tus requirit q̄ tendat
 ad debitum finem ut v̄tus utar bar. in. l. h̄ q̄
 filio. §. eius qui. ff. de iniusto et irritō testō.
 unde solitus sum dicere q̄ deus est remunera
 tor adverbiorum non autem adiectivorum fin
 glo. in. c. i. de collu. detegen. gl. in. c. mōchl
 xvi. q. i. unde quis fortis non adest si lemet
 ipsum occidit quia circa mortem bene si utit
 actu fortitudinis Sed si voluntate dei ad
 mortem devenio et dato q̄ nobis ut inquit
 p̄bis sit naturalis institutus appetitus vite
 tamen alioquin inspiciens et hic inferios ulli
 pendens dicere corde et ore. Cupto dissolui et
 esse cum xpo ut magnus aiebat apostolus tūc
 esset fortis quia fortitudinis actu bñ ulderet
 circa mortem. uti. Nam non sufficit leu
 nara sed oportet bene ieiunare.

Capitulum xxvii.

Ad queritur quid sit principali
 us fortitudinis bellantium an ex
 pectatio hostium an aggressus eorum.
 Et videtur q̄ aggressus sit principalis actus
 fortitudinis. Primo quia ut inquit p̄bis sc̄bo
 ethicorum tractatu de liberalitate virtuosus
 est dare q̄ accipe. Scribitur etiam ecclesi
 asti. iiii. c. Non sit manus tua ad accipieduz
 porrecta et ad dandum collecta Tunc quod
 scribitur beatius est dare q̄ accipe xvi. q. i.
 p̄dicator de donat. c. i. ergo a simili virtuosus
 b̄

est aggredi & expectare quia aggrediens dat expectans recipit preterea virtuosus est bene facere quam bene recipere ut idē philosophus probat. Nam si melius est facere q̄ pati in genere virtutum. ergo bene facere melius q̄ bene pati. consequentia tenet per locum a contrariis qui est validus in iure. ff. de neg. gest. l. superfluitate. Sed aggrediens bene dat expectans bene recipit ergo virtuosus est aggredi. Preterea est melius bene operari q̄ non operari turpe. Juxta illud nō sufficit abstinere a male nisi & bonum faciamus. Nam illud scilicet bene operari bonum meliorem ducit finem. Cum in actibus his finis ponderetur ab illo fiat nominatio quam tenet p̄ locum a fine qui est validus in iure. ff. de re mil. l. si quis. ff. de iure filii non intelligitur. §. si quis palam. ff. communia pre. l. receptum. ff. de auro & ar. l. si non sit. §. peruenimus. Sed aggredi est bene operari expectare est non operari turpe. i. non fugere. ergo virtuosus est aggredi & expectare. Preterea virtuosus ē q̄ difficilis. Nam & l. responsum a r non emanat nisi super difficili & dubitabili. ut l. quod laboro. ff. de car. edi. & l. in si. ff. ad municip. Sed aggredi est difficilis quā expectare. Nam homo scilicet expectare potest nō autem aggredi. probatur maior per eundē pbi. tractatu de fortitudine. Nam actus fortitudinis specialiter est circa difficilia & terribilia. Preterea illud virtuosus q̄ amabilis. Nam actus virtutum de sui natura sūt amabiles ut idem pbi. & probatur. hoc de pe. di. ii. & ca. proximos. Sed aggredi est amabilium q̄ plures utilitates afferit rei publice. & plura in eodem genere p̄valent paucioribus in autem. de consang. & uti. fra. in prin. de sen. excommunica. cum procurator l. iii. q. iiii. engel tendum de offi. deleg. prudentiam in principi. q̄ inimicos expellere est utilius q̄ ipsos expectare. Preterea illud virtuosus quod est laudabilis q̄ virtus moralis est bonū laudabile sed aggredi est laudabilis q̄ expectare. Nam regulariter plus laudantur aggredientes q̄ fugientes. Incontractum est textus pbi. iiii. et ibi albertus & custerblus. Prociencia huius questionis est advertendum q̄ secundum dictamen ratione ratiois non semper est aggrediendum nec semper fugiendum nec semper expectandum. immo quādoq̄ expedit aggredi quādoq̄ fugi quādoq̄ expectare. Ex quo apparet q̄ fortitudinis triplex est actus scilicet aggressus fuga & expectatio & aliquādo fugiē sit forti. patet. nam pericula supra hominem sunt fugienda. Si enim unus solus vellet aggredi ut ipsos aggredientes expectare non esset fortis s̄ audax. & temerarius ut idem pbi. ibidem dicit. Triplex est ergo actus fortitudinis scilicet aggressus fuga & expectatio & inter ista minus

est fuga hoc probatur. Nam ille actus qui est inter ceteros minimus est inter ceteros minus difficilis. Cum ars & disciplina sit circa difficilia ut fugere ē facilis q̄ aggredi & expectare ergo & c. Preterea ille actus est minus virtuosus qui assimulatur vicio primus probatur quia virtus assimulatur vicio peiori probatur p̄ locum ab extremis qui est validus in iure ut. ff. communi di. l. arbor. & l. i. ff. si quis in ius di. non obtempera. & l. q̄nare. ff. de sta. ho. Sic est in proposito. Nam p̄ fugam assimulatur timori quod est prius viciū quā sit audacia ut idem pbi. ibidem. Solo dico q̄ expectatio est actus principalior hoc probatur. Nam virtuosus est bene facere bonum q̄ bene recipere bonum ergo virtuosus est b̄ pati q̄ bene facere malum tenet consequentia per locum a contrariis qui est validus in iure ff. de act. emp. l. inf. §. p̄cur. ff. de instito. l. sed si papill. §. si institutoria. ff. de v. signi. l. bec vba. Sed aggrediens bene facit malum aggressus expectans autem bene recipit malum ab egrediente. Preterea ille actus est principalior qui est difficilior bec pluries. §. probatum est. Sed expectatio est difficilior q̄ aggressus. Probatur hoc. Nam siat aggressus sit in modum fortioris & in spe de evadendo al. autem rō non daretur aggressum si non esset spes evasivus. sed expectatio sit in modum minus fortem ergo fortiorē. sed difficilior est bene se habere cum fortiori q̄ cum minus forti ut clare confirmatur. Nam in expectando oportet moderari timorem magnū cum tristitiis corporalibus. Sed aggrediendo non expedit tantum moderari ergo & cetera. Preterea expectatio & sustinere denotant diuturnitatem & p̄sistentiam & in genere boni dicitur q̄ diuturni melius de pe. di. qui irrilos & c. p̄nata & c. non reuertebatur. ff. de in rem verio. l. si p̄ patre. §. & verius. Sed aggressus denotat quendam impetum parum durabilem p̄venientem ab iracundia ut. l. si adulterium. §. si impetores. ff. de adult. & l. grecus. C. eo. & regula quod colore de reggl. inf. Preterea expectatio facit picula mortis esse al. cause p̄sencia & illa tunc difficilis & timibiles ut dicit pbi. fo rethoricoz ergo Insuper expectationem actum principaliorē fortitudinis licet vulgares non ita in dicantes contrarium sapiant. Si autem q̄ p̄dicti fugam act. fortitudinis videtur obfistere in hoc tractatu scripsi. l. in articulo §. p̄sentibus ad ducem & milites ubi dixi q̄ milites facere debent larametum quo iuraverunt non & c. solo patet ex iam dictis. Nam ubi sunt picula sup̄ hominem fugienda est. x. vii. q. iiii. displicet Jo. vii. Mathei. x. trāsumptum. vii. q. i. §. hoc servandum. Ubi autē sit pericula non sup̄ hominem sed est aliqualis spes tunc p̄cedunt statim dicta. Ad alia in contrarium patet r̄sio discurrendo p̄ singula uno tamen addito videlicet q̄ vulgares

plus laudent et amant aggressores quam expectantes hinc est quod dicitur plus ibidem nihil prohibet milites stipendarios esse quamvis fortes. Nam illi ad modicum lacri vitam mutant et fugiunt et aggrediuntur sine dictamine rationis. Sed quæro quot gradibus fortitudinis quis utatur in bello. Solutio sex sunt similitudines mere fortitudinis que est uirum moralis sita inter audaciam et timorem. Et istis sex utantur milites in bello. prima similitudo propter quam milites uiriliter agrediuntur est propter gloriam et bonorem uidentes quod tales solent laudari et timidi uituperari ut hoc. C. de re militari libro xii. ff. ad. l. equit. lege qua actione. §. si quis in collatione de pu. indic. per totum. Secunda est quod aliqui sunt fortes propter timorem pene corporalis uel pecuniarie que imponi possunt timidis et fugentibus in bello et ista nocetur pollicita quod inter cunctos et talis seruitus est de pe. di. li. sicut secta. Tercia est que uocatur militaria quod homines sunt fortes quia sciunt artes bellandi sicut theotomici et alii experti stipendarii inducit experientia reipublice magistra. ff. de legibus. l. sermo. §. ornamenti bus et c. §. sit de elect. li. vi. Et ut dicitur per. in tractatu de fortitudine stipendarii pugnant cum aliis sicut armati cum inimicis et ista faciles sunt ad adfugendum. hodie tamen se facilius expediunt quia leuant digitum et trahunt barbaram et se reddunt et statim dimittuntur ut est mos eorum inter se. Quarta est quia utantur aliqui propter suam rem. Nam si ror est res impetrans ad periculum. et ista aliquando uiuat in bellis quod homines sunt audaces et hanc inducit impetus ire candie ut. l. si adulterium. §. imperatores. ff. de adulter. et l. græcia. C. de. et l. quod calor ff. de reg. iur. Quinta similitudo est quod homines utantur fortitudine in bellis propter spem. nam aliqui propter spem uictorie uiriliter agrediuntur igitur enim preponderat spes potentie sensibile ratione de consili. nam concupiscentiam vi. di. pensandum. Sexta est propter ignorantiam. nam aliqui aggressiui expectantur uiriliter ignorantes pericula. l. mileri qui tamen fugerent hoc scito ibi non uident quid agant ad instar uisunt. c. de fals. mo. l. l. ff. ad. l. corne. de fisco. l. infans Istis similitudinibus milites regulariter utantur in bellis. Inter istas autem fortitudines si uis uidere que magis attingunt uirtuti. debes attendere quod omnes istæ sunt similitudinarie fortitudinis naturæ. nam in uera fortitudine sicut in quolibet uirtute oportet quod opus fiat scilicet. nam ignoranter operantium nulla est uirtus quod prudentia que est habitus intellectus. regulari debet omne opus uirtutis. Secundo debet elegi. tercio quod eligatur propter bonum intrinsecum. quarto quod operetur firme et durabiliter. quinto quod delectabiliter sexte quod opus debet esse difficile. Nam ars sit

circa difficilia. hec omnia requiruntur in uera fortitudine circa aggressum uel expectatio. nem aliquas terribilis et difficilis per hoc patet que supradictarum magis assimilatur uere fortitudini et que non. nam omnes preter ultimam assimilantur in eo quod scilicet et sic ultima est nunc finalis in eo quod eligens. Alie conueniunt cum uera preter illam que sit ex furore. In ea autem quod propter bonum intrinsecum omnes deficiunt a uera. Nam prima est propter bonum extrinsecum utpote gloriam. Alia propter fugam pene. Alia propter spem uincendi. Prima autem pollicita que est propter honorem et gloriam magis assimilatur uere propter finem honorabilem. Nam honores sunt significatiui uirtutum et isti plus operantur tendendo ad bonum publicum. Nam uiriles bellis insunt ut exemplar plus de beatorum in bellis sic se habente. In pondera quod deberemus habere rationem temporis ad animaduertendum quis dicatur fortior actus fortitudinis an aggressio an expectatio an fuga.

Nam glo. in. l. apud antiquos. C. de fur. dixit distinguere tempora et concordabilis scripturas uide. c. fraternitatis. xxxiii. di. quem tex. allat abbas in. c. non debet de consang. et affini. Nam sicut medicus obstat tempore et iurisperitus nam hodie unum est licitum quod cras erit illicitum ideo lex. unus hodie statuit alia die opposita. l. l. C. de cada. toll. et ibi bal. nam fines occidit hominem et reputatum fuit ad iusticiam ratione temporis abeam non solum homicida sed filicida placuit deo et hoc respiciendo non ad opera sed ad tempus. Tullius ad petium scribens dixit munio me ad hec tempora et teret ait nam hic dies aliam uitam offert et alios mores exponit let unde sapienter dixit Tullius li. i. officiorum dum mutantur tempora mutantur et officium nam ratione temporis aliquando preclarus est fugere quam agredi et econtra et sic de singulis unde legitur in Scipione africano iussit toris quod cum hoste non aliter debere peragere quam si occasio aduenisset aut necessitas incidisset et sic in istis uidetur animi ad quos habuisse sed nonne subius maximus cunctando et ut ita dicam fugiendo restituit Imperium romanis ut nostre canunt historice. In reliquis sequor omnium scientiarum illuminatorum domini panem meum. Et si quisquam inuidus diceret me mendacium predicare hoc quod retuli sua comprobant stadia pariter et opera que in manibus relictæ sunt nostris.

Cap. xxviii.

Tercio quæro An fortis in bello aliquo casu magis debeat expectare mortem quam fugere de bello ubi periculum eundem posset. Et uidetur quod non sit mors expectanda. Nam istud magis est eligendum quam delectabilis

peritose et ipso renouare potest quod noluerit
ut. l. si quis in p[ri]m[is]. ff. de legi. iii. Poeterea
illud privilegium eis concessum debet esse ac-
commodatum ut non p[ri]ncip[ali] civitate romana
ff. de captivis. l. in bello. §. si quis fure. Qui
dam sunt populi qui non obediunt Imperatori
et asserunt hoc sibi competere ex contractu
ut sunt paucie romane ecclesie que asserunt
hoc sibi competere ex donatione Constantini
et aliorum Imperatorum. Et isti etiam sunt de po-
pulo romano. Nam ecclesia ibi exercet iurisdic-
tionem quod habebat Imperator vnde si definit
propter ea esse ciues romani. Idem dico de
regibus qui non sistentur se subditos impera-
tori ut rex francie Anglie Dypanie et simi-
les qui asserunt hoc sibi competere ex priuile-
gio vel prescriptione. Et per hoc infero
quod omnes gentes sere que obediunt sancte ma-
tri ecclesie sic sunt de populo romano. Et
si quis diceret Imperatorem non esse domi-
num diceret contra textum evangelii. dum
dicit exiit edictum a celisre Augustus. Popu-
li autem extranei sunt qui non sistentur impe-
ratorem dominum ut greci qui dicunt suum
imperatorem esse dominum. Item tartari
qui dicunt ganchem esse dominum. Et
sarraceni qui dicunt esse sui dominum solda-
num. Inter istos tamen est differentia. Nam
quidam sunt nobis federati ut greci contra
tharcos. Quidam cum quibus habemus pa-
cem ut sunt tartari. nam mercatores nostri
vadant ad istos et sui ad nos. Quidam sunt
cum quibus nihil facere habemus ut iudei.
Quidam sunt cum quibus guerram actualiter
ut sunt sarraceni et hodie cum turcis. In-
ferat ergo quod cum p[ri]ncipe sit secularis su-
periorum non habens in secularibus nisi for-
te ut dixi quod ipse potest indicare bellum contra
hostes suos et qui sunt post statim patuit. Et
hoc est bellum de quo loquitur. l. hostes. ff. de
captivis et de iur. sig. l. hostes et in hoc uide-
bitur sibi locum bellum quod indicitur a popu-
lo romano ut Imperatore adeo quod si Imperator
inducat bellum civitatibus aliquibus italis re-
bellibus uidebitur sibi locum effectus publici
belli. quod item si repugnetur officiali impera-
tori vel pape non propter Imperatorem vel
papam. Idem arguitur bar. in l. hostes. de cap-
tivis et possimulato reuerfus sequitur ad quod
hic predicatur per personam meam.

Capitulum xiii.

Et querendum quid aliis a p[ri]ncipi
per licet bellum inducere unius
sola solutio non licet sine p[ri]nci-
pale auctoritate. Nam nemini sine p[ri]ncipalis
licentia licet arma portare. ut. C. ut unus ar-
morem in rubro et nigro. et glo. in aut. de m[un]-
cipali colla. iii. et in aut. de armis. §.
colla. vi. et est ratio nam nemini sine p[ri]ncipi-
alis licentia licet arma uolare. Iura p[ri]ncipalis

uoluit qui sine ulla solemnitate manu regia
sua sibi p[re]stet ubi habetur copia sua dicitur
idcirco sine eius auctoritate non licet. Soli
ergo p[ri]ncipi competit sua auctoritate cum
non habeat superiorem ad quem recurrat p[er]
iusticiam. Tamen quod sunt populi non
recognoscentes superiorem de facto non re-
quirunt in illis superiorem auctoritatem cum
recognoscent ymmo tota die bella inducuntur
a populo contra p[ri]ncipem in illo regito. p[ri]mo
dictum p[ri]ncipi mei per ea que noluistis d[omi]ni in cō-
silio. ccc. xli. incipiente ut eius de quo queri-
tur aliqua notitia et ubi dicitur quod sicut in
donatione facta Imperatori vel ab Imperatore si
requirit informatio ut in aut. Idem est. C. de
dona. no. glo. in l. pe. et. et. Ita erit in dona-
tione regis seu alterius domini de facto tenen-
tis locum Imperatoris in terra sua alit. d. l.
p[ri]ncipi. vide io. an. in addic. spec. in t[er]m[in]e de instr[um]en-
tum editio. §. p[ri]mo in ultima addic. et lo. et
ymmo. in. c. cum contingat de iure iuran. in
penult. carta et aliquid per bal. in l. scilicet. C. de
dona. vide. c. p[er] venerabilem qui nulli sunt le-
gittimi vide bar. in l. l. de decre. deca. li. x
in v. col. vide. d. abb. in. c. sup[er] quib[us]dam de
v. signi. in. iii. col. et scripsi multum late in
repeti. mea. l. c[on]suetudo. ff. de vulga. et pup. et
Et pondera quod illud quod hic dicitur per personam
meam approbat per d. abb. in. c. dilem. et. §. de
iure iuran. in. iii. col. vide de m[un]do Innocen-
tius. c. olim de restit. spoli.

Ca. xv.

Lectionis quod n[on] bellum quod
p[ro]mouet Imperator contra ecclesiam
sit iustum et tenentur subditi ei in
hoc obtemperare. vide quod sic quod
sit p[ri]ncipalis nec. vel mandato ergo et. Etia
quia dat iurisdictiones de iudi. c. nouit qui
sua sunt le. c. et per venerabilem de appl[ic]a-
tiōe diacon[um] etiam quia in pertinentibus ad ar-
moz usum subditi debent et tenentur obedire
Imperatori etiam scismatico. l. q. iii. Inf[er].
Solo contrarium est nec. Nam Imperator
est aduocatus ecclesie et tenet eam defendere
idcirco non potest eam impugnare de iatis ex
libro vca. c. vno de restit. spoli. c. cōfrente
ymmo inducendo bellum contra ecclesiam
meret perdere privilegium indicendi bellum
cum illo abutit. xl. q. iii. privilegium de decimis
substitutum ut p[ri]ncipis in quo delinquit et inf[er].
ac. quanto. §. ne autem ymmo talis p[ri]ncipalis
in p[ri]ncipis non distat ab ip[s]o de hereticis ex
emplificamus. l. §. i. et li. no. Etia quia p[ri]ncipalis
superior est. Nam examinat Imperatorem ip[s]e
reprobat et deponit et deest. venerabile et re
iudi. spoli. li. vi. In hoc legitur casu non
tenentur subditi iurare Imperatorem contra
ecclesiam ymmo et contra et potest papa absol-
uere eos a vinculo fidelitatis xv. q. vi. nos
sanctorum et. ca. iuretos et nota de hereticis

excommunicatus. j. de pe. c. ii. Et quoniam a proprio modo potest Imperator inducere bellum contra papam et subditi habebant ei obedire. Dico secundum Jo. an. et hosti. in ca. olim Directi spoli. Dico Imperator est homo iniquus et peccator multas se non coercit sed peiora committit et tandem excommunicatur per papam et omnia contempnitur et mouet bellum propter hoc contra ecclesiam et concludunt postea cum proprio modo hic quod non sit iustum bellum. Unde dominus abbas in ca. sicut et j. de iure iuran. i. vi. co. l. unde dominum abbat. in capitulo venit de indic.

Ca. xvi.

Iterum queritur quid contra si papa inducat bellum contra Imperatorem scismaticum hereticum vel alias usurpantem iura et libertates ecclesiarum omnes fideles tenentur iurare papam et etiam infalli Imperatoris absolui possunt a iuramento quo tenentur vel declarari non tenentur ut ca. nos sanctorum et ca. iuratos xviii. q. vi. In pondera quod idem tenet dominus abbas in ca. sicut et j. de iure iur. in vi. coll. unde ca. venerabilium de electis et in ca. pro humani de homici. utque doc. in ca. ex gestis de de. no. resi. hodie facit quod habetur in extraneante bonifacii que incipit unum sanctum.

Ca. xvii.

Iterum est videndum de aggeganctibus et ipsum bellum peccatibus quo ipse fieri debent. In bello sunt legio. i. habet septem milia centum pedites et septingentos xii equites. Sunt cohortes et quolibet cohortes habet xx. alas. Et prima vocatur miliaria. Et habet pedites mille. Leuites cxxi. Secunda quingentaria dicitur et habet lvi. lita no. glo. ff. de his qui no. in sa. l. l. in prin. hoc legitur et dux et oido faciunt bellum summum de pro multitudine apta et ad bellum parata non autem per secula bellandi. Duo tamen principaliter fundant bellum scilicet arma et vires. Hoc dividitur in tres partes. equites pedites et clancs. Nam equitibus campis classibus mariis et fluminis. pedibus colles urbes plana ardua scrutantur. Hinc inferuntur quod pedites magis sunt necessarii rei publice quam equites quod possunt undique prodesse.

In pondera bar. sequitur. d. l. ii. illegat hic per prosummam meam et alii doc. et postea dicitur quod pedites et equites habent se ut excedentia excessu respectu habito ad qualitatem temporis et loci. ar. glo. l. apud antiquos. C. de far. com. similibus. De legione vide glossam in. c. l. ne sede vocan.

Capitulum xviii.

Ilites autem in bello sic se habere debent ut seruent iuramenta quod presterint. Nam iurent se strenue omnia facturos quod precipit Imperator et nunquam deserturos militiam nec mortem recusituros pro defensione rei publice. ff. ex quibus. ca. ma. l. pen. C. de his qui non imple. sti. l. prima libro. x. Eorum duobus debent obedire ut lege collatos in principio. Nam cum a re publica amantur et aluntur solum debent insistere utilitatibus et esse in numero milicie ut armorum quotidiano exercitio ad bella se pararet ut. l. milites. C. de re. milita. et sic debet duobus obtemperare quod si contra preceptum eorum fecerint etiam bene nihilominus capite puniantur. ff. de re. mili. l. desertorem. §. in bello. Abstinere debent ab aggeganctibus cultura animalium custodiis mercimoniis questu alieno non peragant negocia. Ad civiles curas non accedant alioquin militiam et eius privilegia audabunt et de re. mili. l. nemo milites. C. §. proconf. l. militum. Non emant predia ubi militant et tempe quo militant nec etiam alieno non molestant. Post non inquietabunt. Fallit illa regula ubi fisco distrahatur eorum bona paterna et ubi ex hereditate querunt hoc autem inductum est ne studio culture a militibus aduocentur hec habent. ff. de re. mili. l. milites. Pondera quod sex sunt necessaria in milite. Primo ut non sit negotiosus. Item quod prestat sacramentum per gentium principis quod mortem rei publicae causa non excusabit. Item ut eis cingat. Item stigma. l. nota publica debet eis in brachiis inscribi et inscribi et poni. l. iii. C. §. fabrica. ite i. modo aliter poli et scribi de his per glo. in di. l. pest. et per glo. in rubrica inscribi de ti. militis vide glo. pnam. li. q. l. in. c. prohibet et ea quod habet l. l. C. locasti.

Cap. xix.

De decem autem belli pertinet militibus perclisum comitatum dare equos militares extra provisionem duci non permittere milites in castris retinere ad armorum exercitationem prodere ad opus prestantum piscantur venatum non mittere clancs portarum suscipere vigilas circuire instrumentationi consultationem interire frumentum mensure frangere coercere delicta castigare querelas consultationem modere valitudinarios inspicere. Hoc habent in l. officium. ff. de re. milita. Ad eius etiam pertinet officium in virentis fluminis ripas legionem ponere. Et ut omnino nullus equum polluat ne ut ablucendo quoniam sudorem publicos oculos maculet sed procul in interioribus partibus fluminis id facere permittat. Hoc habent. C. de re. mili. l. ingentis

Ad ipsius etiam officium pertinet castra ponere ubi lignorum pabuli aque copiam habet et ut diutius commorandus sit loci salubritas eligatur in ire sit vicinus aut altior locus qui ab adversariis captus possit efficere. Considerandum etiam ne torrentibus invidari consuevit campus hoc vegetius de re militari. l. i. c. xx. Ad eius etiam officium pertinet finemque militum castramentari castra ne maior multitudo constipet nec ne paucitas in latioribus ultra quam oportet rogat extendi. Ad bonum etiam ducem pertinet in quo loco dimicandum est noscere qui quanto superior fuerit utilior indicat quod si victoriam de perditis sperat contra milites hostium loca in equalia aspera montuosa debet eligere. Sin autem e contra loca plana potentia neque silvis neque paludibus impedita. hec uegecius. l. iii. c. xiii. de re militari. Hoc ad officium ducis pertinent ad specialem magistrum militum ut. l. magisterie. C. de iure omni. iudi. l. i. i. cola. de re militari. Pondera quod etiam dux debet omnia que sunt in bello que sunt causa uoluptatis ordina ta auferre ut peregit publicus cornelius stipio. et alii imperatores efficiantur dari et non delicti ut nostris legitur in historiis maxime in ualerio in. ca. de militari disciplina. Circa multa enim debet esse doctus imperator hostes ferire. presidia agitare nihil metuere nisi turpem famem hyemes et estatem iuxta patii humi requiescere eodem in tempore in opus et laborem tollerare per salustium in gurgio In primis imperator scientia rei militaris debet pollere cicero in oratione pro pompeio Unde uegecius de re militari dicit nullus est quem oporteat uel plura uel meliora scire quam imperatorem. Cuius doctrina debet omnibus prodesse subiectis. Nam turpe est patricio uiro ignorare ius in quo uersetur. l. ii. §. serui autem sulpicius. ff. de origine iuris debet esse litteratus. Nam solitus est dicere Cato quod plus rei publice prodest qui disciplinam militare confert cum liberis. Nam secundum uegecium xlii. ca. iiii. libri bonum imperatorem conuenit noscere ipsum locum in quo dimicandum est. Et alia uide de quibus ibi. Item cicero in oratione pompeiana sic loquitur uirtutes imperatorie uulgo esse existimantur scilicet labor in negotiis fortitudo in periculis. industria in agendo. celeritas in confitendo consilium in providendo.

Capitulum xx.

Arce autem puniuntur milites ut uarie delinquit. nam ut committunt delicta propria aut coia Et in propriis puniuntur pena militari et agei pena gradu sepe milicie ut. l. ii. ff. de re milita. Punitiones autem sunt pecuniarum castigatio. Iniuriarum interdictio ignomine missio ab exercitu missio gradus

deiectio. In metallum autem uel opus metalli non deputat sed decapitat non enim pro milite sed pro hoste reputant. ff. de re militari. l. ii. §. i. et. §. is qui. et. l. peditores. Capite autem puniunt qui proposito manus intulerit qui inobedientes fuerint qui spectantibus ceteris prior fugas arripuerit exploratores qui secreta nuntiant hostibus qui metu hostium infirmitatem simulant qui comilitiones gladio vulnerauit qui sine causa se vulnerauit uel mortem sibi consciscit secus si uite tedio uel doloris in patientia. Nam tales infamia non debent. Per vinum autem aut per lasciuia lapsus militis mutat qui non defendit propositum suum cum potuit capite puniri qui non potuit et pascitur. Hec habetur. ff. de re militari. l. omne delictum et. l. iii. §. si. Item qui explorato re obuiauit hostibus insistentibus aut de fossa to recedit capite puniuntur etiam si rem bene gesserit. ff. de re militari. l. iii. Item si concitauit atrocem seditionem desertor tempe belli capite puniuntur tempe pacis equis gradu repellit pedes militiam mutat. ff. de re milita. l. non omnes Tamen desertores puniendi sunt et qualiter haberi debet ratio gradus ordinis stipendiorum et aliarum circumstantiarum qui excessit pascui comestus ut emanfor uel desertor reputatur habet tamen rationem quibus tardius uel citius rediit uel si implemento aliquo. ff. de re militari. l. iii. §. si. et. l. qui comest et. l. non omnes. Habet etiam rationem ante acte uite. Emanfor est qui diu vagatus a castris ad ipsa rediit desertor qui plerumque tempus vagatus ad castra reducit. l. iii. remanfor. ff. de desertor si in urbe inueniatur capite puniuntur alibi si ex prima defectione captus iterato deserat capite puniuntur. ff. de re militari. l. non omnes desertorum defectorum bona confiscantur. C. de re militari. Pondera quod alienasse arma graue est crimen et simile est defectioni et hac si omnia arma alienauit. Si uero tibiale uel humerale alienauit. uerbis cedendus est. Si uolontariam scutum et gladium desertori ipse est filius l. qui comestus spacium. ff. de re militari. In omnibus que hic dicuntur per paucum meum. Parcendum tamen est tironibus. l. iii. §. si plures. ff. de re militari. l. i. qui cum uno. §. si. et. ti. iterato delinqueret et. ut ibi.

Cap. xxi.

Ed quia dictum est super in. c. xvi. preterito ibi ulterius est uidendum de aggregatibus et. in fine cap. quod fortitudo uel uires et arma sunt dant bellum principaliter et quia in iure non discutitur natura fortitudinis explicite expedit quod ipsius natura aliquantulum explicetur et per modicas questiones cum quibus eius natura concludatur. Et quero primo an fortitudo sit uirtus moralis et appareat quod non Nam fortitudo est dispositio corporalis ut. l. i.

C. de athlet. li. xii. de his q. no. inf. l. athlete
ff. ad l. aquil. qua. actione. §. si quis in collu-
catione de pug. in duello. per totu. C. de gla-
diato. l. i. Ergo non est uirtus moralis cū dis-
positio corporalis differat ab habitu seu dispo-
sitione anime et sic inferior gradu. de de peni-
et remis. l. cum infirmitas. xii. q. i. precipim?
xxiii. q. iii. si habes. C. de sacrosanc. eccle. l.
sanctissima. Secundo sic omnis uirtus moralis est coniectrix in passionibus et opera-
tionibus ut probat philosophus in ethicis. Sed forti-
tudo est coniectrix in medio ut idem phi-
losofus. Tercio sic quod non est una uirtus. non
est uirtus immo uirtutes. quia pluralis locu-
tio ad minus duorum numero est contenta.
ff. de test. l. ubi numerus et regula pluralis.
de regu. iur. li. vi. Et confirmatur per dictum
philosophum primo elencorum. Nam eadem est defini-
tio propositionis et unius propositionis quod for-
titudinis non sit una uirtus probat hic minor. nam
una uirtus opponitur duobus uiciis extremis
ut xl. di. lepe de consue. ex pte. Sed forti-
tutudini opponuntur quatuor extrema scilicet
timor et timor et timor et timor et timor et timor
et defectus in audendo qui est ignorantia ut
probat textus in ethicis. Oppositum probat phi-
losofus in ethicis. Pro solutione questionis est aduertendum
quod fortitudo sumitur equivoce pro fortitudine
que idem est quod robor corporis et fortitudine
que est uirtus moralis. prima est potentia quod
quis potest mouere ut probat philosophus primo re-
thor. et utraq. reperitur in bello et sic sumpta
fuit generaliter cum dixi quod fortitudo seu
uirtus et arma fundant bellum cum utraq. re-
quiratur sed de prima que est robor corporis
non est dubium quod non est uirtus moralis per
supra allegata. Sed de secunda procedit quod
illa est uirtus secundum quam nos bene ha-
bemus circa timorem et audaciam in bellicis
periculis et de ista prosequamur quia prima est
plana in modis et temporibus. Prointel-
lectu autem fortitudinis anime est attende-
dum quod in audendo et timendo contingit
exercere et deficere et utrobique male agere.

Contingit et medie se habere et sic uirtuo-
se. Differt tamen audacia a timore. Nam
audacia est pauido appetitus irrationabilis se-
cundum quem inclinamus ad aggrediendum
terribilia. Timor inclinat ad fugiendum et quod
libet experitur in seipso. sed utraq. contingit
bene agere et male. Nam si quis uideret decem
armatos et solos aggredieretur eos. male cir-
ca aggressuram et male circa timorem ageret
Sic etiam in timendo quis excedere potest
ut exemplum si sint centum homines inaguit
et non uideant nisi centum et fugiunt male cal.
Sic etiam non aggrediendo ut si uiderit spo-
liare ciuitates si non aggrediantur male agunt
Et sic uides excessum in non timendo cum ex-
pedit. in timendo cum expedit. in aggredien-
do cum non expedit et non aggrediendo cum ex-
pedit. Et sic habes uicia extrema audacia et

timorem et utrobique gradum ut supra. Alteri-
us est notandum quod ubique est repere excessum ex-
tremorum uiciorum et uitupabilem ibi est repere
medium bonum et laudabilem quasi esset totum
malum et uitupabile. Nam posset dici quod
defectus est uitupabilis. Nam defectus
diceret defectus mali et sic non foret malum
Expedit igitur quod in medio sit bonum cuius re-
spectu unum dicat malum excedendo aliud
deficiendo. Ex his inferuntur due questiones
seu due conclusiones per solutionem questionis. Prima
quod fortitudo anime est uirtus moralis. Secunda
quod est una uirtus probatur prima. Nam omnis
habitus electus mediis laudabilis est uirtus
moralis sed fortitudo est huiusmodi ergo probatur
maior per locum a diffinitione que argumen-
tatio est valida in iure. ff. de reg. iur. ff. de polli-
li. in prin. et l. bona fides. e. ti. Sic autem
diffinit philosophus uirtutem moralem finem et habet
minorem. Nam fortitudo est habitus intellectu-
us mediis circa timorem et audaciam ut pro-
bat philosophus in ethicis. Confirmatur illa est
uirtus moralis que generat in nobis in more
id est consuetudine et hec appellatur moralis
Fortitudo est huiusmodi ergo et probatur maior
per locum a causa formali que argumentatio est
valida in iure. ff. ad l. fil. l. si is qui quadra-
ginta. §. quedam. ff. loca. l. rei. §. ope. ff. de u-
signi. l. edificia. §. perfectissime et l. quod forma
e. ti. l. q. i. detrabe de bapti. debitum. Probat
minor. Nam in actu bellico propter pericula
appetitus sensitiuus inclinat hominem ad fa-
gas ut dicit philosophus ubi in bellicis uendicat sibi
locum ita et ad ea que sunt impetuosa et sic nos
inclinat ad extrema uiciosa uirtus autem que
est promptitudo appetitus rationalis inclinat
ad medium et illa promptitudo generat ex ac-
tibus iteratis alias non delectabilem operari
et sic non esset uirtus cum in uirtuoso nulla
debet esse appetituum repugnantia ut idem
philosophus secundo ethicis. et patet prima conclusio uis-
licet quod est uirtus moralis. Secunda conclusio
est quod est una uirtus. Quidam hoc sic probant
Timor et audacia sunt passionibus contrarie
Fortitudo est uirtus media ergo est tantum
una consequentia probatur. Nam unum quod
ex agens intendens ad argumentum unius
contrariorum tendit ad remissionem alterius et
sic uirtus minuens timorem auget contrarium
et contra. Confirmat uirtutes morales spe-
cificantur a fine Sed unicus est finis ergo
unica est uirtus. Primus patet per locum a causa
finali quod est ualidum in iure a. l. unus. §.
si fuus. ff. de consti. l. ultima. ff. de decur. l. ge-
neraliter. C. de epi. et cleri. xvi. q. i. c. cum
cessante de appel. et c. et si christus de iure iur. ps
secundum. Nam finis fortitudinis in bellicis est
bonum corpori et si alio bellat propter lucrum
non est fortis immo auarus. Alii dicunt aliter
uidelicet quod timor et audacia non sunt passio-
nes contrarie hoc probatur sic. Timor et au-
dacia se compatiuntur in eodem respectu eius
b

dem ergo non sunt contraria tenet & sequentia
q; posito uno contrarium remouetur reli-
qui. ff. de insti. l. sed si pupillus. §. si instito-
ria. ff. de regu. iur. l. ius nostrum. 1. l. bec. v.
ba. ff. de verbo. sig. in sac. de man. §. li. col. iii.
xxii. di. hospitiorum cum si. Primum patz
nam quia propter bonum honestum bellare.
sed timet propter dampnum etiam quia agge-
ditur 1 sic audacia. 1 non timet ne ledatur
1 timor. Et sic ista opt. est contra textus pbi
secundo recto. nec ualet ipsorum ratio. nam
delegatio 1 tristitia secundum omnes sunt
contraria 1 tamen idem delectari pōt 1 tri-
stari circa eandem actum. tolle in adulterio
delectatur propter sensualitatem. Et sic de p
bitione merces in mari propter tempesta-
tem. Sic in proposito quia tunc propter ma-
lum potens audet propter spem. Primum
igitur opt. acris. unde albertus tenet q; licet
sint quatuor extrema ut supra non tamen sint
nisi duplices. nam quicunq; inclinatur ad be-
ne audendum non timet. Et quicunq; non in-
clinatur ad bene audendum non audet. 1 sic
infert unam uirtutem. Alii dicunt q; si
sunt nisi duo extrema. Nam si aliquis nihil ti-
met nimis audet. Et sic timor 1 audacia faci-
unt sic unum extremum q; sufficiat expedi-
ctis concludere q; fortitudo que est uirtus pri-
cipale fundans bellum ut sumitur pro corpo-
ris robore non est uirtus moralis. sed ut su-
mitur pro uirtute anime 1 uirtus moralis est
una. Et hec est ista que bellum ad finem tñ
producit. Pondera q; an fortitudo sit uir-
tus moralis tangit pbi. optime in iii. et bico.
Et de fortitudine uide tulum li. i. de officiis
in ca. in quo de ea tractat quod quidam ca.
faciunt intelligendum est autem cum propo-
sita sint genera quatuor &c. uide sanctum tho-
mam in secunda secunde questione cxxiii. p
totum 1 theologi in iii. sententiarum di. xxxiii.

Capitulum xxii.

Istam est de fortitudine que fun-
dant bellum principaliter que ē
uirtus moralis 1 una. Sed quia
tractatum dirigo ad Cardinale
Quero utrum hec sit cardinalis apparet q; si
nam magnanimitas nō est uirtus cardinalis
ergo nec fortitudo tenet cōsequentia per lo-
cum a maiori qui est ualidus in iure ut lege. i.
C. de neg. gest. ff. de senato. l. qui in digna. C.
de sacro. sanc. eccl. aut. multo magis solma.
l. ex duera. §. i. C. de epi. 1 de l. si qua p ca-
lumpniam xxii. q. v. si paulus viii. q. i. si er-
go. vi. q. i. in mare xl. di. quilibet de elect. cū
in cunctis. Sed magis uidetur inesse q; ma-
gnanimitas sit uirtus moralis q; fortitudo qz
nobilior 1 maior ut dicit pbi in et bico tra-
ctata de magnitudine. potest primo uidelicet
q; magnanimitas non sit cardinalis qz tunc
cardinales forent plures iiii. Solutio sic to

ta humana conuersatio non versatur circa
fortitudinē ut cardine. ergo non est cardia-
lis q; inde cardinalis mancipatur. tenet cō-
sequentia per locum ab etimologia. qz est na-
lidus in iure. ff. si cor. pe. l. ii. §. appellata in
pbeo. ff. §. discipuli. C. de epi. 1 clerici. de cer-
nim. ff. de nec. sig. l. tigurii. c. t. 1. libeornz
§. q; si papi. xxii. di. clerici. xvi. q. i. si cap.
1. c. cum fm de p. nec. potest primum. Nam
fortitudo uersat solum circa picula bellica.
Sed pauci dicunt uirtutem suam cum bellicis
piculis ergo. In contrarium apparet auc-
toritate cōmuniter loquentium qui istam po-
nunt in numero cardinalium inter quos est
seneca qui fecit tractatum specialem 1 tulio
in rethoricis disidebat uirtutes in bas. iiii.
cardiales 1 hec ar. ab auctoritate est ualida
in iure. C. de sima tri. 1 fide catho. qz iter
claras. C. de ho. q; li. i. cū multa. ff. de re. di. l. i.
tanti. §. synotopi. Pondera q; si uirtutes
his quatuor principalibus satis pbele tractat
li. i. officiorum sit mentio per glo. in cle. i. de
summa tri. 1 fide catho. 1 subdit ibi que
dicantur uirtutes theologice 1 pondera Ci-
ceronem in li. iii. rethorice ad extremum
ubi tractat quid sit prudentia iustitia forti-
tudo 1 modestia. Nam prudentia est callidi-
tas que rōe quadam potest delectum habere
bonorum 1 malorum 1 appellat prudentia
multarum rerum memoria 1 uis plurius ne-
gociorum iusticia est equitas ius unicuique
tribuens fortitudo est rerum magnarum ap-
petitio 1 rerum humilium contentio 1 labo-
ris cum utilitatis rōe perpessio. Modestia ē
in animo continens moderatio cupiditatem
1 de his etiam habet in. c. ex bis. xvi. q. ii.
uide glo. in aut. ut omnes obediant iudicibus
in prin. Et pondera quid sit uirtus quia uir-
tis est habitus electus fm pbi ut scilicet hic
proanus meus. Nam uirtus est que habente
proficit 1 opus eius bonum reddit fm pbi
glo. si in cle. prima de summa tri. 1 fide ca-
tho. Sed Cicero hoc scdo antiquorum retho-
ricorum dicit q; uirtus est animi habitus natu-
modo atq; rōi consentaneus 1 habet quatuor
ptes. i. prudentiam iustitiam fortitudinem 1
temperantiam 1 diffinit singulariter eas 1 po-
nit earum ptes. Dicant enim uirtutes quasi
uiram tuentes 1 pseruantes a uiciis fm glo.
in cle. prima de summa tri. 1 fide catho.
Et pondera q; uirtus aliqui capitur p fine ut
habet in. l. legis uirtus. ff. de legibus

Capitulum xxiii.

Ro euidentia 1 soloe qōis primo
est videndum unde 1 quare uir-
tutes dicantur Cardinales Ubi
scilicet fm alberti q; sicut car-
dines celi sunt poli uidelicet antarctici 1 ar-
ctici super quibus mouetur celus 1 cardines
bestiarum 1 portarum super quibus rotantur

tur. Sic a simili virtutes ille dicantur cardinales super quibus versatur tota conversatio humana et quas et si quis habet dicitur simpliciter bonus et in ipsis non. Sic etiam domini cardinales inde iudicio meo nomen supererant. nam ipsi sunt mundi cardines quibus tota mundi gubernatio revolvitur et fingitur et ad ipsos spectat sustentare totam pondus mobilis gubernationis et motum ipsius fixum pacificare fomentum duobus polis numero contenta est celestis machina et sufficienter stabiles. firmiter ordinem motus non deviant a loco fixationis humani generis monastica gubernatio quatuor cardinalibus suis contenta et sufficit. Si inde unde numerus unde varietas. unde infirmitas. unde tanta a centro distantia a tanta superie dicimus eam non est nomen arbitrii. Sed quod de cardinalatu dixi in tractatu de ecclesiastica censura nunc pertransio ut reddam ut dicam principaliter positum. Et quod iure ut dixi non plene explicatur ad plenum naturalium aliquantulum succincte propter fortitudinem explicandas de eo tractabo.

Capitulum xxiiii.

Sciendum est ergo quod ut dicit philosophus virtus est habitus electivus ut in deum philosophus asserit secundo rethorice omne quod est cadit sub electione. et eligibile est triplex de triplici specie bene proveniens. videlicet bonum utile. bonum delectabile et bonum honestum. Et ista sunt per electionem appetibilia et fugabilia. et omnes virtutes morales circa ista tria versantur.

Explicemus unum quodque. Et primi bonum utile circa quod versatur virtus altero de tribus modis. aut expendendo. aut accipiendo. aut conservando. Plures actus electionis non experitur homo in seipso et ista obductio ab experientia valida est in iure et probatur in probemio. ff. circa prin. in aut ob monac. circa prin. ff. de le. iii. l. si choros. §. bis verbis et de veteri iure inacle. l. ii. §. que oia de elect. §. sit li. vi. Si expendendo hoc contingit dupliciter. Aut enim expendit sua aut aliena. Si expendit sua tunc circa ista expendendo virtus liberalitatis et magnificentie. vicia opposita scilicet avaritia et prodigalitas per uiscentia et beneficentia. Sin autem non sunt sua tunc potest distribuere illis quorum sunt et tunc est iusticia ut. ff. de iusti. et iure. l. iusticia et iusti. c. §. iusticia. xi. q. ii. cu de uotisima. Aut distribuit illis quorum non sunt et tunc est in iusticia ut in iuribus stati allegatis a contrario quod est ualidum argumentum ut. l. i. §. hulus rei. ff. de offi. ci. cui man. est in. et l. per procuratorem. §. ignorantes. ff. de mandati. et c. cum aplicam de his que sunt a p. et c. ci uiri. ob com. plura. i non reddendo illis quorum sunt homo dicitur sim-

pliciter malus xxiii. q. vi. h. res de usuris citu. ff. de usur. l. sequit. §. q. an patet quod iusticia est cardinalis quia non habendo ipsam circa distributionem eorum que sua non sunt homo est simpliciter malus. Sed libertas et magnificentia que consistunt circa distributiones eorum que sunt sua non sunt sua non sunt cardinales quia quis male distribuendo sua non est simpliciter malus sed bene dicitur fatuus. et sic habes unum cardinalem. scilicet iusticia circa expeditionem in utilibus boni. Sin autem uirtus moralis versatur circa annuum utile in accipiendo hoc contingit dupliciter. Nam aut accipit que sua sunt uel debita uel aliena et sibi non debita. Et si sua uel sibi debita et a quibus non debet petat contra liberalitatem magnificetiam. Non tamen est simpliciter malus. hinc est quod contra talem sunt iuris remedia introducta unde vi. vi. bo. rap. ff. et c. per illos titulos furti. et de condic. ex. l. et canonibus que in singulis casibus explicantur secundum varietatem actuum et sic per explicationem unius si actus exceptioles circa bonum utile appetit quod iustitia obtinet cardinalitatem non autem liberalitas sine magnificencia cum per oppositum iustitie dicatur simpliciter malus non autem per oppositum liberalitatis uel magnificencie. Sin autem versatur uirtus moralis in retinendo boni utile hoc etiam contingit dupliciter. Aut retinet et conservet sua aut retinet aliena. primo casu retinendo que sua sunt et nulli dando per det contra liberalitatem et magnificentiam nec talis est simpliciter malus. Et si infestus Si dives viderit pauperem indigentem ad mortem et nihil det peccat mortaliter risderi potest quod tunc retinet non proprium sed com cum tempe talis necessitatis sit scienda promissio ut probat clemens sex responsibus. xi. q. i. dilectissimus et aug. ut transmittit viii. di. quo iur §. i. Sin autem quis retinet aliena simpliciter est malus et iniustus appellatur si iniusto domino retineat et prodica sunt remedia iuris de quibus §. Circa igitur bonum utile elicio unquam bonam solam sententiam cardinalem tam in distribuendo quam in accipiendo quam etiam conservando quia per ipsam oppositus homo est simpliciter malus alie autem non sunt cardinales quia per earum oppositum bono non est simpliciter malus. Cardinalis est iustitia non cardinales sunt liberalitas et magnificencia et hoc clarum. Dicam igitur quod hoc erat secundum bonam delectabile circa quod versatur uirtus moralis et circa hoc versatur uirtus moralis et circa hoc versatur dupliciter aut largiendo sicut sunt virtutes que sunt in ludis et cum aliquis largitur aliis delectationem habet. Et bulasmodi sunt amici cia affabilitas et eutropias. Iste autem uirtutes non sunt cardinales quia non sunt de necessitate humane nature quia multi sunt magni et virtuosus qui in talibus nesciunt se habere. Quin autem suscipiendo et hoc dupliciter. Aut enim versatur principaliter circa delectabile

tunc dicitur simpliciter et appellatur in temperantia. et dico se male habere excludendo. nam insensibilis qui non delectatur non est simpliciter malus sed excedens sic habes temperantiam que optinet cardinaliatum quod per eius oppositum quod simpliciter est malus. Et est de necessitate humane conservationis. Sin autem versetur simpliciter circa tristabile. et hoc dupliciter. nam est quoddam tristabile quod aptum est movere ad iram et tunc versetur mansuetudo hoc non est cardinalis. quia non est necessarium si quis irascatur per actum remittitur quo minus transeat ad actum secundum exteriorem iustitiam. sin autem transiret ad actum exteriorum non diceretur iustitia. Sin autem est tristabile quod est aptum movere ad timorem et tunc est fortitudo. Nam sicut ille est simpliciter malus qui non valet substinere terribile propter bonum fortuitum. Et sic fortitudo est virtus cardinalis et hec de bono delectabili. Dicebam ulterius quod est bonum tertium scilicet honestum. Et tale est triplex quoddam pertinet ad virtutem cognoscitivam. Et hec sunt virtutes intellectuales. et hec sunt scientia. sapientia. intellectus. et prudentia. Quoddam pertinet ad virtutem interpretativam ut veracitas et falsitas. Quoddam pertinet ad virtutem appetitivam. Capiamus secundum membra scilicet pertinens ad virtutem interpretativam et dico quod ista veracitas spectans ad virtutem interpretativam non est virtus cardinalis quia non reddit hominem simpliciter bonum nec eius vicia simpliciter mala et cui vicia magis opposita sunt iactantia. Sed iactator est triplex. Est enim iactator simplex iste est gratia delectationis. alter honoris alter gratia lucri. sola prima iactantia opponitur directe veracitati. Alie autem ingrediuntur aliam speciem vicii nam primus solum spectat quod mendax. sed mendacium est duplex nam est mendacium quod est simplex falsa significatio vocis. et de illo dixi quod directe opponitur veracitati. Aliud est falsa significatio vocis cum intentione fallendi. Et illud facit hominem simpliciter malum et incidit in speciem iniusticie. Et has et alias species mendaciorum persequitur augustinus in mendaciorum transumpti ut habetur xxii. q. ii. ca. primum capitale. Aliud est ut dixi bonum honestum pertinet ad virtutem appetitivam. et hoc dupliciter. aut essentialiter et tunc sunt virtutes morales de quibus super tractatum est. Aut significantie et tales sunt bonorum laus bona terrena. Et circa istud bonum honestum est magnanimitas. et tales non sunt virtutes cardinales. Nam multi sunt virtuosus qui etiam non appetunt honores quibus sunt digni. Sin autem loquamur de bono honesto quod spectat ad virtutem cognoscitivam. Tunc sunt virtutes intellectuales ut scientia. intellectus ars et prudentia. Primum tres non Cardinales quia

non sunt de necessitate vite humane. Sed prudentia est de necessitate boni ymmo im- possibile est aliquem esse virtuosum sine prudentia. Nam prudentia regulat ceteras virtutes. Ex his inferitur qualiter fortitudo propter quam fit finis est virtus cardinalis et apparet quod quatuor sunt elicitive ex triplici bono appetibili et frangibili triplici virtute anime anime nostre. scilicet iustitia temperantia fortitudo et prudentia que nedum Cardinales sed ymmo inter ceteras obtinet papatum et principatum sit aliquis discipulus sed sic supponat. quia non deputari iustitiam pronunciat aliter explicare naturam fortitudinis de qua est principalis finis.

Cap. xxv.

Consequenter queritur An aliquis possit dici fortis etiam si non sinit exercitatus circa pericula mortis in bello apparet quod sic. Nam fortitudo est necessaria bonitati humane cuius sit cardinalis ut super prima questione quod bonitas humana haberi potest sine exercitio belli ergo consequentia probatur a contrariis. ff. de neg. gest. l. et qui natura. l. ii. di. denique. vidi nam de superfluitate. Primum patet per notam. §. prima questione. Item Tullius dicit quod fortitudo est considerata periculorum susceptio et laborum pressio. Hoc autem potest esse sine bellico actu ergo probatur consequentia per locum a sequenti destructo quod est invalidum in iure argumentum. ff. si cer. pe. l. ii. §. ii. C. de fort. l. apud antiquos v. quoniam. ff. de in inte. resti. l. non videtur. Oppositum dicit philosophus iii. ethicorum quod propter hoc continetur in sacramento militis cum accingitur non evitare mortem. l. p. ff. ex qui. ca. ma. et l. i. C. de his que non imple. stip. l. iii. xi. Duo loci questione est attendendum quod fortitudo sumitur generaliter per omni firmitate animi. Et hec est generalis ad omnes virtutes. Nam animi inconstantia vituperatur et iure reprobat. xxii. q. v. horrendus de iure iurā. quem admodum. ff. de adult. l. si melior. ff. de decur. l. p. ff. de neg. gest. l. p. p. Regula quod semel et regula mutare de reg. iur. l. vi. Et hoc modo foret dubium quando talis possit esse sine periculo bellico. Sumitur etiam stricte prout virtus specialis que est inclinatio ad aggrediendum et expectandum pericula pro fugiendo malam culpam unde triplex est malum nocivum quod apponit utrumque triste quod apponitur delectabili turpi quod apponitur honesto bonum autem anime quod est honestum est preferendum bono utili et delectabili sicut anima rationalis preferenda est corpori. xii. q. i. peripim. xiii. q. iii. si habes. C. de sac. sanc. eccle. sanc. cim. de penul. et remiss. c. cum infirmitas. Ex hoc inferitur quod sunt tres virtutes morales necessarie ad hoc ut quis dicatur bonus virtuosus una que persequatur animum ad preferendum bo-

nam honestum nall. Et hec ē iusticia. ff. de in
sti. et iure. l. iusticia iusti. e. §. iusticia xii. q.
ii. cum deoatissima. Alia firmans animus ad
preferendum bonum et honestum delectabili et
hec est temperantia ut vi. di. i. sed pensandas
ē palam de consuet. nam cōcupiscentiā. Alia
firmans animum ad substinendam passionem q̄
incurrendum mali culpe et hec est fortitudo
C. de athlet. l. i. l. i. x. C. de his que non imple.
stipen. l. i. vii. q. i. §. hinc etiam et hec fortitu
do de qua est sermo. Et merito hec dicuntur
cardinales q̄ sunt de necessitate beatitudinis hu
mane et quolibet istarum custodit seipsum. et
qualibet aliarum tolle vel tollit exemplum.
mulier temptata de adulterio per promissio
nis se defendit per temperantiam. ff. de ritu.
nupt. l. palam si temptetur per terrorem ab
isto se defendit per fortitudinem xxxii. q. v.
lucretia et ca. fieri. et ca. finge. xlii. q. i. nō
satis. Si autem temptetur per numerum ab
ista se defendit per iusticiam xii. q. ii. cum o
notissimam. Potest etiam exemplificari
fortitudine. nam si propter timorem dubitat
ab ista se defendit propter fortitudinem ut i
ca. lucretia et ca. finge xxxii. q. v. Si tē
ptatur per delectabilia tunc defenditur per
temperantiam xlii. q. v. non pōt et cap. nec
sola. et ca. qui uiderit et nō machaberis. Et
propter munera tunc defendit iusticia q̄ in
stam est defendere bonum honestum tāq̄ spi
rituale. i. q. i. quā pie. de symonia per totam
Si falsis rationibus tunc defendit se prudē
cia et sic una cardinalium firmat animum ut
preferatur bonum honestum utili ut iusticia.
Alia ut preferatur delectabili ut temperantia
Alia ad substinendam propter bonum tueri
dum et malum culpe excludendum ut forti
tudo. providentia autem ceteras regulat sic
debet esse in cardinalibus.

Capitulum xxvi.

Iterius est sciendum q̄ bellum
sumitur dupliciter uno modo q̄
actu bellandi binc inde ut sumi
tur. ff. de captivis et postli. rev.
l. in bello et l. postliminius. C. de gladiis. l. una
li. xi. Alio modo sumitur pro qualibet expec
tatione corporalis periculi etiam si non sic ac
tualis in usio et hoc si periculi esset cui pos
sit verisimiliter resisti alias non esset bellum
ut in latrone suspendendo et alio iustifican
do. Si bellum accipitur pro actuali inuasi
one binc inde facta fortitudo non est solum
circa illa pericula. q̄ tunc non esset cardina
lis cum multi sunt uirtuosi qui in talibus ex
ercitati non sunt. Sunt autem sumatur se
cundo modo tunc fortitudo versatur circa
ista pericula generaliter sicut dicimus i mul
ere que substinet pericula propter euersionem
castitatis. i. non est bellum primo modo sum
ptum sed secundo sic et tamen est fortitudo.

Notandum tamen q̄ fortitudo non est circa
quolibet bellica pericula. Nam si aliquis ius
dit aliquem et defendit se non est fortis quia
tunc canis esset fortis fortitudine. §. q̄ sub
stinet pericula bellica ppter cuius mali culpe
tē ē fortis unde dicitur phis q̄ non est fortis
propter necessitatem huius etiam cas. xlii. q.
lii. Nabuchodonosor et c. de tiris de pe. di.
li. Sic enim tunc concludit solo questio
nis proposita cum querit an fortitudo sit cir
ca pericula mortis et bellica et dicendum est q̄
non ut exemplum est in muliere. Secundo
modo q̄ extremus actus fortitudinis sit cir
ca mortis pericula videtur q̄ sic quia virtus est
circa difficile. Tertio modo q̄ inclinatur ad susti
nendum mortis periculum si casus occurrat di
cendum q̄ sic et extenditur circa ultimus po
tentie primo cell et mundi. Pondera tu quo
dicit q̄ circa mortis periculum est actus extre
mus fortitudinis. Nam mors constantissimos
teret animos et est propterea passio in rerum fortis
et ultimum terribilium finem phis et vide phis
tertio etichorim dum dixit fortitudo est ag
gressio terribilium ubi mors imminet propter
bonum comune saluandum. Et pondera q̄
dñs patris meus sapienter loquitur more suo
dum dicit secundo modo inclinatur ad susti
nendum mortis periculum si casus occurrat.
Pondera verbum si casus occurrat si trade
ret se quisquam morti ut se ostenderet fortem
non esset fortis ut antiqui faciebant quia ad
hoc ut fortitudo sit virtus requirit q̄ tendat
ad debitum finem ut virtus utar bar. in. l. h. q̄
filio. §. eius qui. ff. de iniuria et irritis test.
unde solitus sum dicere q̄ deus est remiera
tor aduerbiorum non autem adiectivorum fin
glo. in. c. i. de collu. detegen. gl. in. c. mōchi
xvi. q. i. unde quis fortis non adest si se met
ipsum occidit quia circa mortem bene si utit
actu fortitudinis Sed si voluntate dei ad
mortem devenio et dato q̄ nobis ut inquit
phis sit naturalis institutus appetitus vite
tamen altiora inspiciens et hic inferiora utili
pendens dicere corde et ore. Cupio dissolui et
esse cum xpō ut magnus aiebat apostolus tūc
esset fortis quia fortitudinis actu ut uideret
circa mortem. uti. Nam non sufficit leu
nari sed oportet bene ieiunare.

Capitulum xxvii.

Ed queritur quid sit principali
us fortitudinis bellantium an ex
pectatio hostis an aggressus eorū
Et videtur q̄ aggressus sit principalior acc^{us}
fortitudinis. Primo quia ut inquit phis scdo
ethicorum tractatu de liberalitate virtuosus
est dare q̄ accipe. Scribitur etiam ecclesi.
asti. iiii. c. Non sit manus tua ad accipiendum
porrecta et ad dandum collecta Hinc quod
scribitur beatus est dare q̄ accipe xvi. q. i.
predicator de donat. c. i. ergo a simili virtuosus
b 5

est aggredi q̄ expectare quia aggrediēda dat expectans recipit p̄terea virtuosus est bene facere quam bene recipere ut idē philosophi probat. Nam si melius est facere q̄ pati in genere virtutum. ergo bene facere melius q̄ bene pati. consequentia tenet per locum a contrariis qui est validus in iure. ff. de neg. gest. l. super fluitate. Sed aggrediēda bene dat expectans bene recipit ergo virtuosus est aggredi. P̄terea est melius bene operari q̄ non operari turpe. Juxta illud nō sufficit obstinere a male nisi et bonum faciamus. Nam illud scilicet bene operari bonum meliorem ducit finem. Cum in actibus his finis ponderetur ab illo fiat nominatio quam tenet p̄ locum a fine qui est validus in iure. ff. de re mil. l. si quis. ff. de iure filii non intelligitur. §. si quis palam. ff. communis pre. l. receptum. ff. de auro et ar. l. si non sit. §. peruenimus. Sed aggredi est bene operari expectare est non operari turpe. i. non fugere. ergo virtuosus est aggredi q̄ expectare. P̄terea virtuosus ē q̄ difficilis. Nam et l. responsum alr non emanat nisi super difficili et dubitabili. ut l. quod labeo. ff. de car. edi. et l. in si. ff. ad municip. Sed aggredi est difficilis quas expectare. Nam homo scilicet expectare potest nō autem aggredi. probatur maior per eundē pbi. tractatu de fortitudine. Nam actus fortitudinis specialiter est circa difficilia et terribilia. P̄terea illud virtuosus q̄ amabilis. Nam actus virtutum de sui natura sunt amabiles ut idem pbi. et probatur. hoc de pe. di. ii. et ca. proximo. Sed aggredi est amabilis quia plures utilitates afferit rei publice. et plura in eodem genere prestant paucioribus in autem. de consang. et uti. fra. in prin. de sen. excommunic. cum procurator iiii. q. iiii. extendam de offi. deleg. penditiam in principi. quia inimicos expellere est utilis q̄ ipsos expecta. P̄terea illud virtuosus quod est laudabilis quia virtus mentalis est bonus laudabile sed aggredi est laudabilis q̄ expectare. Nam regulariter plus laudantur aggredientes q̄ fugientes. In contrarium est textus pbi. iiii. et h. coram tractatu de fortitudine ubi dicit q̄ principalior actus fortitudinis est insistere. Idem ibi albertus et eustechus. Proci dentia huius questionis est advertendum q̄ secundum dictamen ratione ratiois non semper est aggrediendum nec semper fugiendum nec semper expectandum. ymmo quādoq̄ expedit aggredi quādoq̄ fugi quādoq̄ expectare. Ex quo apparet q̄ fortitudinis triplex est actus scilicet aggressus fuga et expectatio et aliquando fugiens sit forti. patet. nam pericula supra hominem sunt fugienda. Si enim unus solus vellet aggredi ut ipsos aggredientes expectare non esset fortis s; audax. et temerarius ut idem pbi. ibidem dicit. Triplex est ergo actus fortitudinis scilicet aggressus fuga et expectatio et inter ista minus

est fuga hoc probatur. Nam ille actus qui est inter ceteros minimus est inter ceteros minus difficilis. Cum ars et disciplina sit circa difficulta ut fugere ē facilius q̄ aggredi et expectare ergo et cetera. P̄terea ille actus est minus virtuosus qui assimulatur vicio primus probatur quia virtus assimulatur vicio peiori probatur p̄ locum ab extremis qui est validus in iure ut. ff. comuni di. l. arbor et l. si quis in ius di. non obtempera. et l. quare. ff. de sta. bo. Sic est in proposito. Nam p̄ fugam assimulatur timori quod est prius viciū quā sit audacia ut idem pbi. ibidem. Solo dico q̄ expectatio est actus principalior hoc probatur. Nam virtuosus est bene facere bonum q̄ bene recipere bonum ergo virtuosus est huius pati q̄ bene facere malum tenet consequentia per locum a contrariis qui est validus in iure ff. de act. emp. l. inf. §. pcur. ff. de instito. l. sed si pupill. §. si instituta. ff. de v. signi. l. bec vba. Sed aggrediens bene facit malum aggresso expectans autem bene recipit malum ab egrediente. P̄terea ille actus est principalior qui est difficilior bec pluries. §. probatum est. Sed expectatio est difficilior q̄ aggressus. Probatur hoc. Nam fiat aggressus sit in modum fortioris et in spe de cuedendo al autem rō non vitaret aggressum si non esset spes casus. sed expectatio sit in modum minus fortis longe fortioris. sed difficilis est bene se habere cum fortiori q̄ cum minus forti ut clare confirmatur. Nam in expectando oportet moderari timorem magnū cum tristitia corporalibus. Sed aggrediendo non expedit tantum moderari ergo et cetera. P̄terea expectatio et sustinere denotant vincibilitatem et plerantiam et in genere boni dicitur q̄ vincit melius de pe. di. qui irriter et c. penata et c. non reuertebatur. ff. de in rem uerbo. l. si p̄ patre. §. et verus. Sed aggressus denotat quendam impetum parum durabilem puenientem ab iracundia ut l. si adulterium. §. si impetores. ff. de adult. et l. grecus. C. eo. et regula quod colore de regl. iur. P̄terea expectatio facit periculum mortis esse al cause presentia et illa tunc difficilis et timibiles ut dicit pbi. fo rethoriconum ergo Insertur expectationem actum principalioris fortitudinis licet vulgares non ita indicantes contrarium sapiant. Si autem quōd p̄dicti fugam act. fortitudinis videtur obstarē in hoc tractatu scripsi. l. in articulo §. p̄sentibus ad duces et milites ubi dixi q̄ milites fuare debent iuramentum quo iurauerunt non tē. solo patet ex iam dictis. Nam ubi sunt pericula sup̄ hominem fugiendū est. x. xii. q. iiii. displicet Jo. viii. Mathei. x. transumptum. vii. q. i. §. hoc seruandum. Ubi autē sit pericula non sup̄ hominem sed est aliquis spes tunc pcedunt statim dicta. Ad allata in contrarium patet r̄sio discurrendo p̄ singula uno tamen addito videlicet q̄ vulgares

plus laudent et erant aggredientes quod expectantes hinc est quod dicitur philosophus ibidem nihil prohibet milites stipendarios esse quamvis fortes. Nam illi ad modicum lucri vitam mutant et fugiunt et aggrediuntur sine dictamine rationis. Sed quero quot gradibus fortitudinis quis utatur in bello. Solutio sex sunt similitudines vere fortitudinis que est vere moralis sicut inter audaciam et timorem. Et istis sex utantur milites in bello. prima similitudo propter quam milites viriliter aggrediuntur est propter gloriam et honorem videntes quod tales solent laudari et timidi vituperari ut habet. C. de re militari libro xii. ff. ad l. equit. lege qua actione. §. si quis in collatione de pu. ind. per totum. Secunda est quod aliqui sunt fortes propter timorem pene corporalis vel pecunie que imponi possunt timidis et fugentibus in bello et ista vocatur pollicia quod inter cunctos et talis servilis est de pe. bi. li. sicut secta. Tercia est que vocatur militaris quod homines sunt fortes quod faciunt artes bellandi sicut theotonicus et alii experti stipendarii inducit experientia regum magistrorum. ff. de legibus l. sermo. §. ornamenti bus et c. quod sit de elect. li. vi. Et ut dicitur philosophus in tractatu de fortitudine stipendarii pugnant cum aliis sicut armati cum inimicis et ista faciles sunt ad adfugendum. hodie tamen se facilius expellant quia leuant digitum et trahunt barbutum et se reddunt et statim dimittuntur ut est mos eorum inter se. Quarta est que utantur aliqui propter suam rem. Nam si res est res impetiosa ad periculum. et ista aliquando invenit in bellis quod homines sunt audaces et hanc inducit impetus ire candie ut l. si adulterium. §. imperatores. ff. de adulter. et l. i. græcia. C. et l. quod color ff. de reg. iur. Quinta similitudo est quod homines utantur fortitudine in bellis propter spem. nam aliqui propter spem victorie viriliter aggrediuntur igitur enim ponderat spei potentie sensibilem rationem de consil. nam concupiscentiam vi. di. pensandam. Sexta est propter ignorantiam. nam aliqui aggrediuntur expectantes viriliter ignorantes pericula l. miser qui tamen fugerent hoc scito ibi non vident quid agant ad instar infant. c. de fel. mo. l. i. ff. ad l. corne. de fisco. l. infans Istis similitudinibus milites regulariter utantur in bellis. Inter istas autem fortitudines si nil videtur que magis attingunt virtuti. debet attendere quod omnes istæ sunt similitudinarie fortitudinis nature. nam in vera fortitudine sicut in quolibet virtute oportet quod opus fiat scilicet. nam ignoranter operantium nulla est virtus quod prudentia que est habitus intellectus regulari debet omne opus virtutis. Secundo debet elegi. tercio quod eligatur propter bonum intrinsecum. quarto quod operetur firme et durabiliter. quinto quod delectabiliter. sexto quod opus debet esse difficile. Nam ars sic

circa difficilia. hec omnia requiruntur in vera fortitudine circa aggressum vel expectatio. nam aliquis terribilis et difficilis per hoc patet que supradictarius magis assimilatur vere fortitudini et que non. nam omnes propter ultimam assimilantur in eo quod sciunt et sic ultima est nunc similis in eo quod eligens. Alii conueniunt cum vera propter illam que sit ex furore. In eo autem quod propter bonum intrinsecum omnes deficiunt a vera. Nam prima est propter bonum extrinsecum utpote gloriam. Alia propter fugam pene. Alia propter spem incendi. Prima autem pollicia que est propter honores et gloriam magis assimilatur vere propter finem honestabilem. Nam honores sunt significatio virtutum et isti plus operantur tendendo ad bonum publicum. Nam viri in bellis insistant ut exemplar philosophus de hoc more in bellis sic se habente. Tu pondera quod deberemus habere rationem temporis ad animam aduertendum quis dicatur fortior actus fortitudinis an aggressio an expectatio an fuga

Nam glo. in l. apud antiquos. C. de fur. dixit distinguere tempora et concordabilis scripturas vide. c. fraternitatis. xxiii. di. quem tex. allat abbas in. c. non debet de consang. et affini. Nam sicut medicus observat tempora et iurisperitus nam hodie unum est licitum quod cras erit illicitum ideo lex. unius hodie statuit alia die opposita. l. i. C. de cada. toll. et ibi bal. nam fines occidit hominem et reputatum fuit ad iusticiam ratione temporis abenam non solum homicida sed filicida placuit deo et hoc respiciendo non ad opera sed ad tempus. Tullius ad petrum scribens dixit munio me ad hec tempora et teret ait nam hic dies aliam vitam affert et alios mores exponit let vnde sapienter dixit Tullius li. i. offitium dum mutantur tempora mutantur et officium nam ratione temporis aliquando preclarum est fugere quod aggredi et econtra et sic de singulis unde legitur in Scipione africano i bis totis quod cum hoste non aliter debere pugnare quod aut si occasio advenisset aut necessitas incidisset et sic in istis videtur animi ad tempus habuisse sed nonne subitas maximas ciuitando et ut ita dicam fugiendo restituit Imperium romanis ut nostre canunt historice. In reliquis sequor omnium scientiarum illuminatores doctores penam meam. Et si quisquam invidiosus diceret me mendacium predicare hoc quod retuli sua comprobabit studia pariter et opera que in manibus relictæ sunt nostris.

Cap. xviii.

Tercio quero An fortis in bello aliquo casu magis debeat expectare mortem quam fugere de bello ubi pugnam cedere possit. Et videtur quod non sit mors expectanda. Nam istud magis est eligendum quod delectabilius

et illud minus quod minus primo rethorice
dictum est philosophi. Sed est delectabili
or uita quam mora. ergo eligibilis est fugere et ui
uere quam expectare et mori. Oppositum au
detur dicere philosophis. ethicorum tractatu de
fortitudine et tercio tractatu de uoluntatis
et uiolento et etiam tractatu de magnanimi
tate ubi dicitur quod prius est moriendum quam aliqd
turpe committendum. Solutio pro euiden
tia questionis est aduertendum quod questio po
test habere duplex fundamentum. unum uerita
tis et fidei. ut supponamus aliam uitam et be
atitudinem et secundum hoc fundamentum quod
non habet grande dubium. Nam si aliquis pu
gnaret contra infideles et propter fugam suam
multi perirent fideles et solus saluaretur tunc
preeligenda esset expectatio et mora. Est et
ratio nam fugiendo consequitur uitam corpo
ralem. Expectando consequitur uitam aie que
est sine comparatione nobilior ergo preeligen
da. Secundum fundamentum potest esse
naturalium et uiuentium secundum legem na
ture ut non supponatur ulterius uita. et tunc
questio habet dubium et opiniones uarias.
Aliqui dicunt quod mora expectanda est quod con
tingere potest multipliciter. uno modo quod eu
denter certum sit mortem euenire debere ei
expectatione nec spes sit de salute non tantum
fuga. Alio modo quod licet sit aliqua euidencia
mortis tamen spes aliqua haberi potest de ui
ta sicut fuga. Isti secundo casu dicunt intel
ligendas auctoritates Aristotilis et aliorum
philosophorum qui dicunt quod magis est moriendum. i. ui
uere pugnandum. Primo autem casu di
cunt nullo modo mortem expectandam. pro
bant hoc sic. nam de duobus malis minus est
eligendum xlii. di. uerum et principium i mo
ralibus. Sed minus malum est fugere quam ex
pectare et mori ergo quod sit minus malum p
batur. nam illud est minus malum per quod
pauciores bona perduntur quam illud per quod plu
ra. Sed in morte omnia tolluntur ut in au
ten. de nupt. §. deinceps et li. philosophorum.
In fuga perditur solum bonum fortitudinis
moralis ergo x. Preterea si melius esset mo
ri hoc esset quia mori esset actus uirtutis. Sed
hoc est falsum. Nam actus uirtutis est felici
tas uel ad felicitatem tendens. Sed mora est
felicitatem destruens ergo x. Preterea si
hoc casu eligenda esset mora hoc esset quia forti
tudo que est uirtus moralis ad hoc inclinaret
sed hoc est falsum nam uirtus moralis non ten
dit ad corruptionem nature sed ymmo ad con
seruationem ipsius non ad hoc facit sicut leges
iiii. di. facit sunt. sed mora tendit ad destruc
tionem in autem. de nupt. §. sed deinceps. p
terea si hoc deberet quis magis eligere. aut
hoc forte propter bonum proprium aut alienum. non
propter proprium quia in morte omne bonum
extinguitur ut supra tactum est. non alienum
quia non tantum bonum potest alteri conuenienter
querere quantum sibi perdit cum seipsum plus

aliis debeat diligere ut. l. p. c. de krui.
et aqua. Confirmatur. nam secundum uerita
tem et fidem apparet quod uirtuosissimi milites
fugebant in bello ut tempore karuli magni.

Alii dicunt totum econtra scilicet
quod potius expectandum et moriendum quam fu
giendum et hoc probant. Nam quilibet scit
se de necessitate moriturum esse. Si ergo
moriatur fortis non perdit nisi id in quo cre
dit mortem presentem differre a futuro. Sed
non differunt in hoc quod est amittere bona u
tutis et conseruare. Sed differunt in hoc quod
est diutius retinere et minus dimittunt tunc
argunt sic illud elegibilis esse in quo plura
bona acquiruntur et pauciores perdunt. Sic
est in proposito ergo. Probat hic minor. Nam
si moriatur queritur actus fortitudinis qui est
nobilissimus si fugit querit nisi continuationem
potius habitum donec duret uita et sic quis
tempus. Confirmatur. Nam certum est quod
constitentes circa delectationes corporales
magis eligant quod modico tempore uiuere pe
na. Ergo sic in delectationibus animo
hoc potius est eligendum. Opinio est primam
credo ueram. Nam ut dixi in alio articulo
actus fortitudinis sunt aggressus fuga et ex
pectatio. Nam non semper insequendum nec
semper fugiendum nec semper expectandum
ymmo cum dictamine rationis. Distingue ut
supra primo. c. et sequor pauum meum hic. Nam
uirtuosus est aliquando euitare mortem da
to quod debeat mori ut magnus fecit paulus apostolus
cum timeret interfici a iudeis petiit militem
a pretore quorum presidio ille saluaretur et
tamen nihil aliud cupiebat nisi mori et esse ei
christo Ideo illud egit quia tempus non suade
bat non longe ex tempore petamus. Nam passum
saluator noster qui uenit crucifixus occidi
hoc in mundo pro nobis peccatoribus tamen
cum a iudeis lapidibus molestarer abicon
dit se et exiit de templo cum templis quali
tas hoc fuisse quia nondum uenerat Calice
passionis. Aliquando pulchrius est mori
nam ut solitus est de Cathone dicere Ula
lerius magnum hominibus dedisti documen
tum o Catho quanto potius debet esse populi dig
nitas sine uita quam uita sine dignitate et ne di
scedas a distinctio temporis prefata tibi sit
cura rogo.

Ca. xix.

Quarto queritur pone dux exer
citus mandauit ne quis priuipat
in hostes sub pena capitis quidam
stremitissimus miles cum magna
comitibus militum quibus imperat contra man
datum ducis prorupit in hostes et ipse stre
mitate totaliter hostibus confictum dedit
queritur an capite puniendus sit uidetur quod sic
Nam dicitur tex. in bello qui rem inibatam a
duce fecit aut mandata non seruat capite pu
nitur etiam si rem bene gesserit. ff. de re mili.

*l. desertorem. §. in bello pbitur plura q uo-
lunt astrictas obedientia ad ipsam teneri. ff.
mandati. l. si remuneranti. §. si pignus. 1. l.
si pculas. ff. ad mact. l. sed 1 si. §. si. ff. ad. l.
acquit. l. si seruus seruus. §. si puerum. C. de
neg. gest. l. si. Confirmatur. Nam malus nō ex-
culatur ppter bonum quod sequit. l. vi. di. c.
vii de pe. di. l. non sufficit. Cōfirma-
tur Nam facta non sunt ab euentu nōnda
xl. di. c. non est xxi. q. v. de occidendis. ff.
de neg. gest. l. sed an ultio. §. i. ff. man. l. qui
mutuam. §. hpt. Ergo ab hoc euentu insigni.
non fiet notatio ymmo ab obedientia preue-
nienti. In contrarium uidetur. nam prop-
ter periculum 1 factum in signo effectualiter
perpetratum remittitur pena que alias ipo-
ni deberet aliquid attemptanti contra legem
vel mandatum principis probat tex. ff. de pe-
nis. l. ad bestias xxi. q. ii. qui cū patriarcha
Solutio audio q dominus richardus malō
his determinauit q deliquit propter magnā
periculum penam euadit per. l. ad bestias. 1 in
daci poterat dictum. C. qui cum patriarcha
Tamen illam opt. non puto ueram ymmo ap-
te est contra textum. l. desertorem. §. i. bello
ff. de re mili. Nec obstant iura in contra-
rium allegata. nam aliud est quem incidere
in penam. l. mel. hominis. Aliud est post pene
cōmissionem ipsam a picipi remitti posse illa
non probant quo minus pena cōmittatur. s;
bene probant ipsam a principe posse remitti
illo iura non probant quominus pena cōmit-
tatur. sed bene probant ipsam a principe pos-
se remitti. Et sic supponunt illam cōmissam
ut probat utriusq. textus si bene inspicatur.
Tu pondera q sapienter loquitur dominus
proennis mens. iura sua probant 1 responsio-
nes ad contraria habent spiritum 1 cōprobo-
bitionem. nam postumus dictator aulum po-
stumium filium. q non suo iussu sed sua spon-
te pcessio progressus hostes fuderat victorē
secari feriri iussit. 1 tamen cum puerum lris
1 luuenem armis instruxerat x. Jtē ma-
li itorquanti latino bello filius cum esset pno-
catus agemio mecio duce tusculanorū ad
dimicandum patre ignaro decesserat 1 glo-
riosem victoriam reportauerat arripi a lutto-
re 1 in modum hostie pater iussit feriri 1
mactari x.*

Capitulum xxx.

Quinto quero pone dux belli ca-
pitur ab hostibus nanquid ē ue-
nia concedenda an ueniat puni-
endus. Et uidetur q uenia sit q
cedenda per capitulam noli in si. xxi. q. i.
Ecce tex. sicut de bellati 1 resistēt uolētū
debetur sic victori capto uenia conceditur.
hoc probatur. Nam dicit textus q tenetur
quis parcere hosti suo. ii. q. vi. quanto in si.
Ecce tex. qui sicut incontinentia pstititib;

scenos non esse conuenit sic humilibus 1 pe-
nitentibus locum uenie negare non debem?
In contrarium dicitur. Nam captus efficiē
seruus hosti ut l. hostes. ff. de captiuis 1. ff.
de v. signi. Soto. Credo primam partē vāz
videlicet q uenia sit concedenda humiliato
1 resistere uolenti si p uenie concessionē pa-
cis perturbatio timeatur Tunc enim uenia
plectēdus est hoc pbat tex. in. c. noli in si.
ibi dum dicit maxime in quo pacis perturbatō
non timetur. Et exponit bug. 1 archi. max.
ime p tātum ut sit sensus lre q solum sit con-
cedenda uenia ubi non timetur pacis perturba-
tio als non fertur q p illam expositionē ka-
rolus fecit amputari caput Conradino. Tu
pondera quia dominus pennis mens bā loqē.
Nam Suenus Pompeius regi Armenie tigna-
ni pepcit 1 diadema qd abiecerat capiti re-
ponere iussit iudicans eque pulchrum esse 1
vincere reges 1 facere reges

Rubrica De his qui ad bellum accedere
tenentur 1 de accidentibus non strictis.

Cap. xxxi.

Extio uidendū restat v his q
tenentur ad bellum accedere
Et quid de accidentibus nō
astrictis. Et queritur primo

An si dominus moueat iussu
bellum teneantur uasalli accedere cū armis
1 equis 1 in expensis propriis 1 uidetur q
sic quia vigore iuramenti tenent iurare dñs
ut. xxi. q. v. de forma Innoc. in. c. sicut de
iure iuran. tenent q non teneant nisi ex pac-
to speciali ad hoc ut sint obligati cum ipsi nō
tenentur ad munera psonalia. Conclude hoc
q uasalli non tenentur v iure nisi ad ea que
continentur de casu in forma. xxi. q. v. nisi
ex speciali conventionē ad aliud obligentur.
Cōpro opinionem dñi pauli mei q stipēdiis
suis quis militare non debet. c. cum ex officii
de pscript. fm dñm abb. in. c. i. ne prelati ul-
ces suas. Nam dignus est mercenarius
mercede sua ut magn⁹ pcedebat apostolus
in. c. quicūq. xii. q. ii. de. q. inde spe. in ti. de
studia. §. qm vñ. xxi. queritur.

Capitulum xxxii.

Secundo queritur pone q baro
regis yspanie moueat guerram
ipsi regi 1 mandet omnibus suis
ut teneant ipsam in bello contra
regem. nanquid tenentur cum iurauerit ipz
iurare contra omnem hominem 1 uidetur q
sic nam graue est fidem fallere in ca. i. de peis
ca. ueniens 1 ca. se. de iure iuran. l. i. ff. de cō-
sti. pec. l. i. ff. de penis. Etiam uerba genera-
liter prolata generaliter sunt intelligēda. ff.
dele. prestan. l. i. §. generaliter. Etiam quia

iuramentum astringit non a iuramento solvantur xv. q. vi. ca. ii. l. iii. Contrarium est verum. Nam baro mouens guerras regi incidit in l. i. l. i. maiestas l. i. l. ii. ff. ad l. i. i. maiestas. vi. q. i. §. verum ibi quisquis cum milibus lxxix. di. ca. ii. Nam rex hyspanie est princeps in regno suo etiam opem non fert quod ad peccandum huiusmodi. q. vi. sed res necesse est captum illius eos excuset. ff. de act. et obli. l. seruis xi. q. iii. non semper et ca. qui resistit et ca. si dominus nec statim ad hoc ligatur. quia non est innocentem ut sit iniquitatis vinculus xxii. q. i. l. i. Inter cetera de iure iuran. ca. i. l. vi. faciunt que non. ca. peticio de iure iur. Tu pondera quod opus domini proavi mei non est infusus quia in quolibet iuramento intelligitur excepta publica utilitas videtur excludi maiestas dei pape vel imperatoris ut in c. peticio de iure iuran. Et probatur in l. imperiali. §. si. de prohib. alle. stud. per sede. et ibi bal. dicens quod in quolibet iuramento intelligitur excepta persona regis si illud iuramentum prestat a subdito regis opinionem suam tenet spec. in titu. de feudis. §. quoniam v. xv. queritur.

Capitulum xxxiii.

Ecce queritur baro regis hyspanie mouet guerras alteri baroni. Rex hyspanie mouet guerras regi granate. baro mandat hominibus quatenus inueniant ipsum. Rex autem mandatur eidem ut inueniant eum et concurrunt mandata. quem primo inuare tenentur. videtur quod primo baronem. nam baroni sunt subiecti ratione fidelitatis et ratione iuris dictionis ut in ante. de questi. §. si vero colla. vi. Regi autem sunt subiecti ratione iurisdictionis generalis tantum. et sic due rationes vincunt unam. ut in ante. de consue. et utri. fre. §. i. de re iudi. ca. cum eteni. l. vi. xiii. di. ca. i.

In contrarium videtur. Nam vocati a rege sunt vocati ad maius tribunal. et sic preferendum ut. ff. de re. iudi. contra. pupillos. §. si. xviii. di. l. si episcopus. Etiam quia rex vocat pro comuni bono et defensione corone. Et sic iuregen. obediendum. ff. de iusti. et iure veluti. l. di. iugentium xxxiii. q. iii. fortitudo et. q. viii. ca. omnium et capitulo dimissa. Nam pro defensione patrie licitum est patrem iter vicere. ff. de reli. et sup. fun. l. numme. et bec vera. Teneo opus proavi mei et cum tenet spec. in titulo de feudis. §. quoniam v. xvi. queritur.

Capitulum xxxiiii.

Quarto queritur quid de vasallo non ligio duorum quod esse potest ratione duorum feudorum de supple. negli. pla. c. grandi. l. vi.

si uterque dominorum simul requirant cum ut huiusmodi in bello an tenetur utriusque an alterius et quem inuare tenetur. Apparet quod neutrum cum concursu se impediant. ff. de iusi. l. quotiens de pe. di. i. §. bec idem v. xpian. ait. i. q. i. c. primo. Apparet quod utriusque alias pderet scilicet quia difficultas pstationis ex parte pmissionis non pimit obligationem. ff. de v. obli. continuas. §. illud. Item potest quod duobus dominis seruire ut. ff. de op. le. l. duorum.

Quidam dicunt locum esse gratificationis exemplo sui duorum dominorum qui si uiderant utriusque dominum se interficere inuare poterint quem uoluerint. ff. ut sup. l. si quis in grau. §. si cum omnes. Alii dicunt quod inuabit priorem dominum et cui primo iuravit ut in uili. sed. v. prohibi. seu alle. l. impalem. §. illud. ff. loca. l. in opus. C. qui po. in pi. ba. l. ii. Nam priorem fidelitatem seruare tenetur. l. di. quia tua q. de uel mona. c. unico. Tutius tamen est quod primo seruiet personaliter. Secundo per substitutum si hoc patitur natura scudi. C. de cadu. toll. l. i. §. si. in autem. Nec obstat quod iurauit secundo salua fidelitate primi quod est de natura hominis non ligi quis seruando se per substitutum non nocet primo quod fuit saluum iuramento scoli.

Pondera quod dixit bal. in l. i. §. ne autem C. de cadu. tollen. in. iiii. col. Et pondera quod forte deberet esse locus gratificationis p. c. cum autem de iure petro. in ar. uel deberet forte terminari ar. capli. fora. xxvi. q. ii. vbi quod dixit petrus de anchorano in. c. i. v. eo qui mit. in pos. li. vi. vide non. in. c. in nostra de testibus et forte non esset inconueniens dicere quod deberet inuare illum qui iustum moueret bellum contra aliam dominum ar. capli. pmi. xxxiii. q. vi. in vbi. non enim opem fert. et. Et sic deberet subuenire meliori per ea quod habentur in locis antedictis.

Capitulum xxxv.

Quinto queritur an vasallus tenetur inuare dominum contra patrem uel patrem contra filium. Et lo. format questionem. xxii. q. v. c. de forma. et tenet quod sic. Nam filius solus unicalo nature obligatus est patri. Sed vasallus domino unicalo iuramenti ut in p. dicto c. de forma probat tex. in uili. seu in ti. que ad modum seu amitt. glo. aliquantulum sentit contrarium in. c. quoniam multos xi. q. iii. Putarem pendendum qualitatem impendendi subsidii an cuius duorum ciuitatum teneatur unam inuare contra aliam. Solutio dicunt dictum est in vasallo duorum dominorum. Pondera que no. no. doct. et maxime dominus abb. in capitulo peticio. de iure iuran. Et ita cum opus domini abb. ibi.

Capitulum xxxvi.

Et primo queritur dominus vale
 ire ad partes remotas. pone ul-
 tra mare ad pugnandum cum bar-
 baris nunquid uasallus uocatus
 ab eo tenetur ipsum sequi ad bellum. Sola-
 tio. si dominus est talis status et conditionis
 quod predecessores ipsi consueverunt illuc acce-
 dere et uasalli ipsum sequi tunc tenentur ex
 eplo liberti qui tenetur ad operas consuetae
 ff. de operis liber. l. opere. et l. penul. ff. de pi-
 gno. act. l. qui uniuersorum prestabuntur tibi
 a domino sumpt. moderati arbitrio boni uiri
 Sin autem sit talis qui non possit nec con-
 fuerit tunc secus. ff. de oper. liber. l. quod ni-
 si. §. si. ff. de arbit. l. si cum dicitur. §. si. arbitri.
 Pondera quod spe. idem quod proanus meo hic
 tenet amplectitur in titulo de fendis. §. qui
 uerit. xxiii. queritur. Unde quod i simili scri-
 bitur per doc. maxime per dominum abb. in
 ca. l. de contagio leprosozum dum facit ques-
 tum an uxor debeat sequi uirum uagabundi
 uide abb. in ca. ex tue de clerici. non resi. cir-
 ca ff. uide glo. xxxiii. q. ii. sicut exitabile. uide
 de roma. in rubrica. ff. de ma. uide bal. in l. q
 mammittuntur. C. de operis liber pmo. i ru.
 ff. de ma. uide que habentur in. c. l. qui mrl.
 accusare pnt xiii. q. ii. c. unaqueque per Cy. in
 l. iii. C. de iuribus mile. bar. in l. menia. §.
 l. de annuo le. bal. et ange. in l. si cum dotez
 §. si maritus. ff. solu ma. uide glo in. ca. si ux-
 orem xxvii. q. v. uide nico. de nepo. in l. q
 uis. §. i. de operis liber. per spe. in tit. de com-
 pe. in d. adicio. §. l. uer. sed quid si debitor
 uagatur et bar. in l. i. C. de colonis trascens
 bus li. xi Et pondera unum quod dixit bal. l.
 ca. l. §. l. quo tempore miles inuestituram pe-
 tere debet in. iiii. col. ubi si dominus uolat uas-
 allus non debet nolare.

Capitulum xxxvii.

Circa queritur quid de suis an
 teneantur ubique sequi dominum
 ad bellum de his non est dubium
 cum in eos domini plenam habe-
 ant potestatem diuino domini non seruiet
 in eos. ff. de his qui sunt sui uel alie iur. l. l. et
 li. Seco cum pmo meo hic et de libertis
 adde quod liberti debent prestare obsequium domino
 portabile et non durum et importabile ut in
 l. libertos. C. de obsequiis.

Cap. xxxviii.

Quo queritur quid de libertis.
 Solutio liberti tenentur ad o-
 peras impositas nec insolite eis
 possunt imponi. ff. de ope. liber.
 lege nisi. §. finali et ff. de procura. lege §
 tunc. §. ii.

Capitulum xxxviii.

Et primo queritur quid de agricolis
 an uocati ad bellum a domino
 tenentur accedere. Solutio diui-
 ditur in ascripticios et censitos ascripticii dicuntur
 per scripturam solo ascripti unde in ascripticulis
 due interueniunt scripture una ad constitu-
 endum alia ad probandum. Prima qua pmit-
 tunt domino soli nunquam a solo recedere. Alia
 qua profitetur se ascripticiam et de his scrip-
 turis in l. cum scimas. C. de agri. et cen. et
 iter hos et faos pene nulla est dria ut. l. ne diu
 C. e. Et dico pene quia differunt in aliquo ga-
 lerius alienari potest cum peculio et sine ut
 dicta. L. ne diu ascripticius non sine solo ut. l.
 li. C. e. Item ascripticii circa domini uolui
 luitatem ordinari possunt in possessionibus quod
 bus ascripti sunt in aut. de sanctissimis epi.
 §. ascriptios serui autem non. Item ascrip-
 cii sciente et tacente domino contrahunt ma-
 trimonium nec conditionem mutant ut. C.
 de agri. et cen. l. si. Serui autem contra-
 hentes scientibus dominis et tacentibus libe-
 rantur a seruitutis conditione in aut. de nupt.
 §. si uo. Ex quibus luce clarius apparet quod his
 quod habent in ascripticulis et eius relati ad
 possessiones quibus ascribuntur et sic inter
 quod prouocati a domino ad externa opera personalia
 non artantur nisi aliud ex consuetudine sit re-
 ductum. Censiti autem sunt qui certe rei pre-
 stande amantur constituti sunt. C. quibus ca.
 coll. Item in hoc differunt ab ascripticulis
 quia ascripticii sunt ascripti ad certam rem
 prestandam puta terciam uel quartam fruc-
 tuum. Isti autem certe rei et de his inter
 ut. a. Pro hoc inferitur quod nec coloni nec
 inquilini necessario artari possunt. Seco cum
 proano meo. An equiparentur ascripticii et sui
 Et an equiparentur ascripticii et coloni scrip-
 si in repetit. rubric. de testis hoc. c. quam co-
 posui dum publice sextum legem Bononie

Cap. xxxix

Undecimo queritur quid de con-
 federatis et colligatis Nunquid
 dominus poterit confederatos su-
 os prouocare ad bellum ut ipsi
 lauari teneantur Solutio Confederati sunt
 plene liberi licet ad aliqua teneantur ex pec-
 to ut. l. non dubito. ff. de cap. et postli. reuerf

In his igitur tamen ponderanda est con-
 uentio et conventionis modus ut ad unguem
 seruetur. ff. de ho. liber. §. si non uenerit. ff. de
 postli. et l. de pact. Clerici predicant pauperes
 meos quod non debemus a conventionibus re-
 cedere. c. de pactis. l. ff. de constit. pecu. et
 plimica que procedunt de labris meis non
 faciam irrita. Sed pondera quod si ciuitates
 sunt ad inuicem confederate bantitas d. una
 non intelligitur bantitas de alia ciuitate fm
 bar. in l. non dubito. C. de capti. Et an sint
 licite confederationes que quotidie sunt in.

ter civitates q̄ apud nos vocantur lige vide
bar in l. si ff. de colle. illicitis.

Capitulum xxxi.

Undecimo queritur quid de his q̄ sūt
subditi ratione iurisdictionis tan-
timō non sunt autem vasalli. So-
lutio tales agere et accedere tenentur nec a-
gent ad perditu q̄ hoc faciunt ex debito fal-
lit hoc regulare dictum in quibusdam perso-
is que excusantur a muneribus personalib⁹ quo-
rum quidam excusantur etate ut minores et
senectute gravati ut C. qui etate in rubro et
nigro. Quidam infirmitate ut C. qui morbo
per totū qdā libe. nu. ut. C. q̄ libetorū p̄ totū
Quidam propter professionem ut C. de p̄fē.
et medicis. Quidam sexu ut mulieres et simi-
les alias stat regula. Pondera quia ratio
est iura. Nam inferiores debent suis superiori-
bus obedire ca. ii. de malo. et obe. et in summa
xciii di. et in ca. a subdiacono et vide. ca. iul.
xi. q. iii. vide oīo dominū abb. in ca. sicut et
infra de iure iuran. circa finem ubi loquitur
de vasallis. et de subiectis et cum in omnibus
sequor.

Capitulum xlii.

Ecce autem dicta sunt de his per-
sonis que sunt qualiter cano-
sticte. Restat videre de liberis
plene et ad bellum provocatus. p̄
cuius evidentiā est attendendum q̄ accede-
dum ad bellum non de necessitate nec ex de-
bito q̄ de istis supra tactus est. Quidam ac-
cedunt plenā liberalitate quidam accedunt
q̄ tenentur ad antea. Quidam accedunt
propter gloriam querendam et consequendā
in bello. Quidam accedunt q̄ locant opas
suas si contractus locati appellari potest sti-
pendium. Quidam accedunt solum animo spo-
liandi ut nuncupati facomani quasi manu eri-
pientes ut sacco deferentes. Et de his vide-
mus primo de primis ut de plebe libere a cre-
dentibus. An libere accedentes obligent si-
bi illum in cuius servitium vadunt etc. Et
primo queritur nunquid accedentes libere
ad bellum obligent sibi illum in cuius servi-
tium vadunt si dampnum incidunt puta sed in
bello perdant arma equos siue capiantur si-
ue etiam cundo ad bellum siue redundo.
Solutio hic est attendendum q̄ accedentes
libere aliquando accedunt p̄i vocati et ro-
gati a dominis aliquando motu proprio non
requisiti a dominis. Si accedant vocati a
dominis tunc habent actionem mandati cō-
tra dñm. et sic ut. d. dictū cōtingit ego aliqd
perdere nisi appareat q̄ cā pietatis humanitatis
vel parēte hoc faciant xciii. q. iii. nō inferē
dñs xl. q. iii. si dñs et ca. iudici. Sin autem
opponas et dicas dominū nō teneri q̄ talia
perdunt casū fortuito de quo quis nō tenetur

de homic. Jobines. C. de pigno. act. l. que
fortuit. Sol. ite casus fortuitus qui potuit
et debuit provideri q̄ verisimiliter hec con-
tingit in bellis q̄ dubius ē eventus belli ita
no. Inno. in capitulo sicut de iure iurando.

Pondera tamen q̄ si bellus fuisset illicitū
non possent agere mādati q̄ rei turpis nullū
est mandatum. l. si remanenti gratia. §. rei
turpis. ff. mandati ita concludit etiam hosti.
et Innoc. et moderni in. c. sicut et. j. de iure
iuran. Et dicit Innoc. in. c. si vero de sent.
excomunic. et d. abb. in. c. sicut et. j. de iure
iur. q̄ vocati possent agere contra vocantes
actione mandati que contingunt casu fortui-
to diuino vñ contingere potuisset quasi
vocans hoc debuit cogitare a primo. Et sic
debet intelligi. l. inter cās. §. non omnia. ff.
mandati secus Si dampna cōtingerent ex ca-
su fortuito qui vñ non fuisset cogitatus
ut. d. §. non omnia. Hec vñ sunt multi nō.
et magnificat ea abbas in dicto. c. sicut et. j.

Capitulum xliii.

Secundo queritur quid de cōmo-
dante tali arme et equos p̄ cūdo
ad bellum nunquid si perdantur
tenetur comodarius cōmoda-
ti et videtur q̄ sic. ar. d. p̄. a simili cum etc.
Solo in hoc casu secus fuit Innoc. Et est rō
offic quia in hoc casu comodatus nō excedit
fines mandati quia non est usus nisi ad usum
illum ad quem initus est contractus idcirco
non tenetur. ff. cōmod. l. si ut certo. §. sed in
terdum. In mandato autem licet p̄stare
potuerit tamen sciebat sibi actionem mādati
competere quia illud evenit ex natura con-
tractus et hec semper procedunt nisi ex pac-
to speciali aliqd sit indictum. Pōdera q̄
alii doctores in dicto. c. sicut et. j. sequuntur
id qd̄ hic dicitur p̄ pronum meum et d. abb.
ibi in. x. col. vide. l. si. et ibi bar. ff. cōmod. ubi
comodarius non tenetur sibi sine culpa sua
usus est re cōmodata ad usum ad quem fuit
cōmodata.

Capitulum xliiii.

Terio queritur quid de locante
equos et arma Nunquid si p̄dā
in bello ager locator contra con-
ductore. Solo dicit ut. d. i cōmo-
dante quia non ager quis ad hoc p̄davit nec
fines excessit. ff. loca. et condu. l. si quis do-
mum. Opinionem patris mei sequitur In-
noc. et abb. in. d. c. sicut dignum et. j. de iure
iuran. in. x. col.

Capitulum xlv.

Quarto queritur quid si provocat
ad bellum in itinere accedendo
ad eius subditiū spoliatur armis
equis et aliis rebus suis Deinde

est q mandans tenetur mandatorio. Sed
numquid ager mandatorius contra spoliante
vi bonorum raptorum vel furti apparet q sic
quia eius interest actione mandati mandata
rio. Solo. si contra spoliante competunt
actiones ille 1 ratio quia vi. bo. rap. cōpetit
illi in cuius bonis erant rapta. ff. vi. bo. rap. l.
li. §. quia actione. Et ratio enim vi. bo. rap. vel
furti non competit nisi illi qui habuit domini
um vel possessionem vel detentionem vel ali.
quod ius in re ut est ille cui res est pignori
obligata 1 nondum tradita. ff. de p̄scrip. §.
l. si gratuitam. §. si quis. ff. de fur. l. si is qui
rem 1. l. is cui spoliatus ergo competunt hec
actiones. Doterunt tamē agere mandati cō
tra mandantem mandans cum soluerit facer
libi reddi 1 cedi actiones contra spoliantez
Et tunc ager iure cesso ut procurator consti
tutus in rem suam. C. mandati. l. pe. 1 si. hec
etiam tenet Jnno. in preallegato ca. sicut d̄
iure iuran. Pondera q dominus abb. in
ca. sicut 1 infra de iure iuran. sequitur opini
onem procul mel.

Capitulum xlv.

Quinto queritur de accidentibus
nō prouocatis sed motu proprio
Solutio si animo donandi est cla
rum ut puta pietatis humanita
tis vel parentele tales non egent xxiii. q. iii
non inferendo xi. q. iii. h. dominus 1 ca. iul.

Si autem animo obligando illum cuius
negocia gerunt tunc agent neg. gest. sed an
ultra. Pondera q uiriliter est gestum no
mine alicuius quis cogitur habere ratum se
cundum q no. bar. 1 bene in l. pomponius.
ff. de neg. gest. in .x. col.

Capitulum xlvii.

Exto queritur quid de acciden
tibus proprio motu 1 ille i cuius
subsidiū uadit tenuit 1 contra
dicit non iurāt illum si talis accedens utiliter
incipit 1 feliciter p̄elia an habeat illum 1 c
subsidiū aut obligatum actione negotiorum
gestorum apparet q sic ad similitudinem
illius qui trahit aliquem inuitam de domo ru
itura xxiii. q. iii. ipse pietas. etiam qz inui
to cedi potest beneficium xl. v. di. 1 qz emen
dat. etiam qz uidetur fuisse in sane mentis q
traducendo ut iuratur. ff. de conui. insti. l.
quidam de pe. di. li. ad hec instantes.
Sic tenet glo. in medico mendicante cliquet
contra uoluntatem suam hec no. lxxiii. di.
in summa. Contrarium credo in casu pro
posito per l. ultimam. C. de neg. gest. Nec
propterea reprobo glo. ymmo credo q uerum
dicat in infirmo 1 medico qz infirmus presu
mitur in sane mentis cum non uult absolute
curari sed iste qui contradicit huic non ue

niet in securia suo ad bellum non presumitur
sane mentis. Nam possibile est q non confi
dat de eo 1 dubitat ne perdat ipsum. nec cre
do q glo. procedat in casu in quo firmus be
ne uellet sanari. sed nollet istum medicum q
alium potius. tunc iudicio meo non procede
ret glo. nec hec probant allegata supra
Pondera ea que dixi erunt doc. in dicta. l.
fi. C. de neg. gest. 1 pondera q due limitati
ones uidentur dare per prosum meuz ad. l.
fi. C. de neg. gest. Et de alijs p. l. nō tm̄. ff. de
appel. ubi p dampnato ad mortem possuz ap
pellare etiam eo inuito 1 tenebitur mihi ex
pensas reficere. Item aduerte aliam liti
tionem quam tradit bar. in l. sticus. ff. de pe
cul. 1 io. an. in. c. cum. c. laycus de foro ppe.
l. de eo qui condemnatus erat ad decem que
si non solueret infra mensem amputaret ma
nus q possum eo inuito soluere illa. x. 1 post
ea ab eo repetere nec potest dicere potius uo
lebam q mihi amputaretur manus itē lita p
l. sed 1 iul. §. q dicitur. ff. ad mace. ubi loq̄
de eo qui mutauit filios. pecunias bene stu
dēt contra patris uoluntatem quia a dicto
patre ualet repetere. Item in eo qui sepe
lit defunctum contra heredis uoluntate qui
repetet impensas. l. sed 1 si quis. §. Jdē labeo
ff. de religiosis. Et uide roma. in l. quāuis. ff.
solu. ma. 1 no. in l. si mulier in p̄t. col. ff. so
lu. ma.

Ca. xlviii.

Estat uidere de his qui uadunt
ad bellum quia tenentur ad an
tidora utputa quia simile uel ali
ud subsidium recepit ab eo nun

quid tales agent contra illum quem iuuet ad
p̄dita. Solo si sic uadunt ut thema supponit
uadunt animo dissoluende obligationis natu
ralis que tamen non possunt deduci in ci
uilem nec de ea excipi potest in iudicio. l. de
qua. ff. de iudic. ff. de heredi. pe. l. §. si lege. §
consuluit de testis in offic. Et sic inferitur q
uadat nō animo obligandi cum idem act^o uni
formiter sumptus non possit pati contrarios
effectus. ff. de §. obli. l. quis. x. de condi inde
l. cum para. §. si heres 1 l. cum heres. Et si
dicas hic non est opus dissolue quia nulla na
ta obligatio efficax ad agendum uel excipien
dum 1 sic non potest dissolui quod non est d̄
inuito ru. 1 irri. testō. l. Nam idem quod de
spon. in pup. c. ad dissoluendum. Solo licet
non sit nata obligatio efficax ad agendum uel
excipiendum ut supra dictum est tamē nata
est talis naturalis que dissolui potest p anti
dora recōpensationem ut iuribus statim al
legatis 1 sic animus dissoluendi naturam
obligationis cum in obligatione requirit ani
mus ut l. obligationum. ff. de act. 1 obli. 1. l.
non figura. c. ti. Tu pondera quia de obli
gatione ad antidora uide glo. in. cap. cum in
offic. de testis 1 glo. in. c. 1 si q̄code symo.

re non poterat pbat p. l. scit. §. qui cū
al. r. ff. ad. l. equit. unde sumpta est dicta de.
7 hoc ad exemplū saluatoris qui fugit in egip
tam. xlii. q. iii. §. l. 7 hoc nō bernardus in
. c. suscepim de homici. Contrariū credo
p. l. in eadem. ff. ex qui. ca. m. Nam ibi equi
parantur hoc duo non posse recedere 7 sine
dedecore nō posse recedere fortius mouet qā
in fuga possit occurrere periculi utpote si ca
deret qd frequenter occurrit in fuga unde
non debet se tali piculo exponere ut lit. non
contes. accedens le. li. In hoc tñ credo pōde
randas singulas circumstantias. ut puta per
iculum fuge. qualitatem persone fugientis 7
innocentis ut si propter fugam uerisimiliter
meritis periculum incideret. tunc non sit i
putandum alias sic. Ante omnia pondera
que dixit sanctus thomas secunda secunde.
q. xl. articulo. ii. ubi ad clericos pertinet dis
ponere 7 inducere alias ad bella iusta uide do
minum abbatem in. ca. peticio de iure iuran.
clericus pbat p. l. pbat qd fideles qd beane
agers clerici quando bellum est iustus debet
ortare alios ut pugnent sed ipsi non debent
pugnare ut ibi per abbatem. 7 per dominum
abb. in. c. q. in dubis de pen. de materia uide
d. abb. in. c. clericus de uita 7 ho. cl. i. c. uide
ca. qui. l. distinc. Possunt enim clerici mo
uere bellum ad eorum defensionem. possunt i
teresse belli sed non possunt propolis manib
pugnare sed bene clamore exhortari &c. Sed
caueant ne dicant occidite per ea que habet
ur in ca. significasti el. secundo de homici. 7
in ca. ex l. de excels. poela. uide glo. in ca.
scilicet vii. q. i. 7 quod legitur in ca. ex
multa tenore 7 quod uoluit dominus abb. in
ca. licet 7 infra de iure iurando. v. col. Uide
doc. in ca. cum olim de resti. spoli.

Capitulum liii.

Uid si stipendarii sunt assumpti
de Alamanis per ciuitatem ita
licam uel dominum constituto
salario habentes firmas certi te
poris. Interim dum sunt in itinere uenienti
chitas occupatur per tyrannum uel domi
perdit statum suum nunquid agent stipenda
rii ad salarium uel pro rata uel ad quid.
Et uidetur qd ad totum. nam uidetur tex. p
hoc primo. C. de anno. per co. col. l. prima. C.
de agen. in rebus. l. matriculam. §. de p. p. p.
sacrorum scrine. l. si quis in sacris. C. de pri
me. l. i. ff. de le. legatum. ff. de ner. 7 extra
or. co. l. i. §. scimus. In contrarium uiden
tur tex. C. de ero. mili. ano. l. in scolariis 7
l. pe. in fl. 7 l. post duos. C. de aduo. diuer.
off. Solutio hic debetur pecunia ex con
tractu puro. immo debetur ex dispositione
l. qui sunt electi ad officium 7 ex dispositio
ne. l. municipalis datur salarium ergo non e
mere contractus locati 7 cōducti. Et i tali

bus est aduertendum qd aliquando aliqui di
guntur ad officium quod requirit laborem
ubi datur salarium p labore principaliter ut
sunt stipendarii Aliquando eligunt ad of
ficiū ubi datur salarium non solum p labo
re sed quia attenditur pbitas intellectus 7
scitē ut in potestatibus 7 similibus. Quic
eliguntur ad officium 7 datur salarium pro
utroq. s. labore 7 pbitate intellectus 7 scitē
ut in legatis. Primo casu datur p rata
temporis quo seruiunt ut. l. pe. C. de foro. mi
li. anno. Et no. que dicit. j. ff. cap. l. cū sy.
Secundo casu si una pstatio tantū erat tunc
totum datur ut in leg. allatis in contrarium

Sinautem non erat una pstatio tunc
debet p anno quo incepit officium ut. l. post
duos. C. de offi. aduo. dñi indi. Tercio casu ali
quando datur in remunerationem laboris 7
pudentie 7 tunc aut est indiuisibile ut in ad
uocatis doctoribus 7 legatis 7 tunc dñt totū
ut super habita distinc. an sit una pstatio uel
plures ut. §. Aliquando est diuisibile ut in cō
testabili banderle nam. l. utq. eligitur. l. in
dastria 7 labor 7 recipiant diuisionem tunc
ut stipendarii recipient p rata ut industriofi
7 racione industrie electi habet totum distig
uendo ut. §. Est dare quantum casum ubi
quis eligitur ad dignitatem principaliter ut
domesticus principis tunc habet totum ut. l.
si quis in sacris. C. de p. p. sacror. scrine. 7
l. matriculam. C. de agen. in rebus 7 l. i. de
p. uile. 7 transit salarium ad heredes ut. C. de
domest. 7 p. l. i. ff. l. xii. Per hoc soluit
qd de comite de lando assumpto capitaneo la
triculoz societatis pluribus assumpto p dños
italicos ad stipendium facta firma certi te
poris 7 constituto salario. Pondera qd bar.
in. l. i. §. diuus. ff. de uariis 7 extraordi. cog
ni. l. i. 7 l. i. col. sequitur opi. procul mei. Et
forte non esset. nulum dicere qd in quacūq
locante operas si per eum non stat quomin
seruiat sed stat per conductorem uel per ca
sum fortuitum debet locator semper habere
integrum salarium. l. qui operas. l. sed 7 ade
dea. §. penul. ff. loca. unde potestas qui non
sua culpa sed culpa ciuim non potuit exer
cere officium nihilominus debet habere inte
grum salarium sed bal. in ca. de studio guar
die. uide bar. in. l. i. §. diuus ff. de uariis 7 ex
traor. cogni. quando loquitur de aduocato
qui defuit causam culpa clientis nō aut fia.

Capitulum liiil.

Iterius queritur quando deat
solum stipendarius an in principio
cuiuslibet mensis. an in fine glo.
aliquando uidetur dicere i ad
uocato qui etiam militat ut. l. aduocati. C.
de aduoca. diuerso. iudi. quod debeat a pri
ncipio hoc tenet in. l. i. §. diuus. ff. de uariis 7
extraor. cogni. Item sentit in. l. p. p. adu
c 2

6. in bonariis. C. de iudi. l. qui opes. §. l. ff. loca. 7. conduc. Contrarium tenet in l. i. C. de pmipt. li. xii. Sola aliquando dat pecunia magis p sumptibus q p mercede laboris 7 tunc debet in prin. tolle exemplar in legatis pbatut hoc. ff. de legi. l. legatu. ff. ma. dati. l. si vo non re. §. si mandata. C. de leg. l. ii. li. x. Aliquando debet pecunia p mercede laboris 7 tunc debet pderari qd acti sit expresse uel tacite. Nam si tacite actus sit tunc uidetur q in principio. Ecce talis e qui non potest exhibere operas promissas nisi sibi detur pecunia. tunc uidetur actum tacite q debeat in principio tunc enim temp inspiciamus quod uerisimilibus est. ff. de reg. iuris. l. semper in stipulationibus. Sin autem non apparet ista similitudo. tunc in obligat. que descendit ex contractu salarii debetur in fine temporum ut no. in l. eden. C. loca. 7. conduc. 7. no. ff. de sti. seruo. l. seruas communis. §. finali. Sine autem debeat ex dispositione legis electis ad officia de quibus supra in proposito tunc si est unum tantum salarium inicio debet prestari. l. i. §. di. uis. ff. de uariis 7. extraor. cog. 7. sic intelligitur glo. hec sentientes. Est autem annui menstruum ut in stipendiis de quibus loquimur qui hnt vii. flo. i. mense proposita. 7. tunc debet in prin. ut l. post duos. C. de aduoca. diuerso. iu. 7. lege prima C. de priucl. ii. xii. Puto tamen q stipendiarii non habeant nisi pro rata temporis effectualiter quo seruiant ut supra dictus est 7. residuum teneantur restituere. ubi etiam propter causam intrinsecam i. surgat impedimentum. Pondera q dixit bar. in lege per hanc. C. de aduoca. diuersorum iudiciorum 7. ibi bal. etiam q in medio anni debet solui salarium uide glo. i. c. u. edetes l. q. iii. ubi uidet q salaria doctoribus in prin. anni solui debeantur. 7. c. uide bal. in l. ii. C. locati uide bar. in l. i. qui insulam. §. qui eden. ff. locat. uide bar. in l. i. §. diuiso d. var. 7. c. i. ordi. cog. in vi. col.

An stipendiarii se absentes tempore aliquo etiam de licentia domini perdant stipendium pro tempore illo.

Ca. lv.

Quid si stipendiarii pendente tpe stipendii recedant aliquo tempore Nunquid p illo tempore perdet stipendium 7. pone q cum licentia domini. Sola hic aduertendum q ope aliquando limitantur respectu temporis non certi facti tolle in aduocatis ecclesie qui habent tantum salarium p qualibet causa q occurret ecclesie illo ano tunc non est dubium q est una obligatio ppter unum factum ad qd inducitur licet pstationes possent esse plures idcirco totum debetur ut in pall. l. i. §.

diuis. ff. de var. 7. c. i. ordi. cog. Aliquando ope sunt limitate respectu certi facti 7. certi temporis ut in doctore assumpto ad legem diu libe tpe certo 7. tunc aut pmittit totum salarium simul sed sit distributio solac. p partes temporum 7. tunc etiam una obligatio est ut d. l. lecta. ff. si cer. pe. Aliquando sit annua uel mensura 7. tunc sunt tot obligatoes quot sunt menses ut l. post duos 7. tunc non habet pro toto tempore immo singulis mensibus qd seruit cedunt dies obligationum singularum.

Pondera quoniam idem uidetur tenere bar. in l. i. §. diuis. ff. de uariis 7. c. i. ordi. cog. posset tamen allegari glo. in l. de ptores. §. si ad die. ff. de iure fisci. q stipendiarius q recessit p aliquod tempus cum licentia conductoris debet habere interim salarium. 7. c. a maiori posset aliter q dixit bal. in l. i. C. de p. d. i. inferis i. fi.

Capitulum lvi.

Quid si culpa sua nolunt seruire toto tempore An pdant salarium totius temporis sic q nihil habent pro tempore quo seruierunt

An solum perdere debeant p tempore quo non seruierunt. Sola quedam sunt officia ad que quis eligitur que sunt individua pro aliquo obmisso residuum releuat. tolle exemplum in potestate in stipendiario tunc non reddit totum sed solum pro tempore futuro tenet nisi p suo tpe ad sece ut si nihil esset nihil soluat ff. loca. 7. co. l. si fid. v. s. i. s. 7. no. i. m. i. ff. de an. lega. De hoc pondera in simili quod dixit bal. in l. ii. C. locati. 7. bal. in l. eden. et. in iiii. col. uide bartolum in l. i. si fundus. ff. locati. uide bartolum in lege prima. §. diuiso i. fine. ff. de uariis 7. extraor. cog. q.

Capitulum lvii.

Quid si uolit seruire per substitutum apparet q non possit q de cta est industria personarum. l. in ter artifices. ff. de solu. Et l. i. i. m. e.

C. de cadu. tollent. 7. ca. ultimo de offi. dele. 7. capitalo is cas co. ti. li. vi. In contrarium uidetur q potest quis per alium quod per se ut regula potest quis cum sy. Solutio debet ponderari modis a sumptionis. Nam aliquando dominus uel ciuitas assumit conestabilem cui dat baneriam 7. stipendium 7. conestabilis debet sibi eligere sub baneris quos uoluerit tunc non currit questio inter ciuitatem 7. stipendiarios q ciuitas nihil eligit nisi industriam 7. laborem 7. conestabilis ipse tamen tenetur. Aliquando ciuitas eligit sibi stipendiarios quos reponit sub singulis bafi 7. tunc in conestabili eligitur industria 7. opera 7. ex capite industrie non possit dare substitutum ut iuribus statim allegatis In stipendiariis tamen eligitur opera 7.

labore. tunc in his quorum opera labor et etiam industria eligitur potest quis dare substitutionem ut no. juno. in ca. cum bertoldus de re iudi. hosti. ibi contra. Credo opi. juno. verosam ponderatis iuribus statim allegatis et communi mente. Tunc tamen est quod fiat cum consensu domini ut servetur utriusque opinio. In hac materia pondera quod dixit bar. in l. i. §. diuus de natis et extraor. cog. ubi si electa industria persona non potest servare per substitutionem si impeditur propter dignitatem seu peramentem potest servare per substitutionem. Si enim non tenetur dare substitutionem regulariter de doctore an possit per substitutionem legere. vide bar. in l. inter artifices. ff. de sol. et abb. in ca. i. de summa. tri. i. iii. col. de us. fallo. vide glo. in l. quisquis. C. de epi. de cle. glo. in ca. letorem xxiii. q. ii. Et an quis valeat servare per substitutionem vide glo. in l. n. l. l. C. de curio li. x. glo. et bar. in l. continuus. §. si ab eo. ff. de ver. obli. in l. i. un. metal. lum. ff. de penis. bar. in l. neminem de cu. li. x. vide bal. in l. ad similitudinem. ff. de epi. et cle. vide bal. in l. i. §. ne autem. C. de ca. tis. tollen. vide §. qui ait. in autem de sanct. episcopis et in §. ascriptio. Et pondera quod quando quis potest servare per substitutionem substitutus debet esse eque psonas ut scripserit qui promissit scribere librum non potest scribere discipulum sed glo. in l. stipulationes commodissimum. ff. de ver. obli. Et idem notat glo. in l. C. de manci. et colo. primo. li. x. Et vide ibi quod sapienter dixit bar. vide lo. an. in re. qui facit de re. in li. vi. i. merca.

Capitulum lviij.

Quid si stipendium infirmis. Solvitur videtur ut habet videat salarium ut l. si beatus §. stichus. ff. de statu liboris. Pondera quod dixit glo. in l. arbitrio. §. de illa. ff. de usufructu. vide bar. in l. si uno. §. cum quidam in l. si loca. vide bar. in l. opere. ff. de usufructu. l. bal. in l. cum quidam. C. de condi. insertis in l. vide de §. ab in. c. l. de de cler. egrotante.

Capitulum lviii.

Quinto videndum restat de spoliis et captivis que in bello sunt. Et primo an in bello aliquid capiens efficiatur dominus personae capte et rei. Et an sit locus postliminio. Solutio in bello publico auctoritate principis indicta de quo supra dictum est hec omnia procedunt nam capiens efficit ut dominus capti efficiatur servi ut l. hostes. ff. de captivis et l. hostes de verbo. signat. Sed in autem bellum non fit ex edicto principis. licet alias in statum ut cum sit pocius decem rerum pocius tunc si ille qui bellum indicit habet iurisdictiones

super eo pro quo bellum indicit potest statueret quod quilibet capiens aliquid in bello illo efficiatur rerum captarum et personarum retentor donec presentet superiori ita tenet inno. in c. de iure iuran. remittens super hoc ad no. in ca. a nobis de senten. exco. Subdit juno. quod si non fecerit aliquam constitutionem poterit illum condemnare de iniusticia facta infra fines sue iurisdictionis ut i. au. q. in pociis. C. ubi de crim. agi opt. Subdit quod si bellum indicens nullam habet iurisdictionem sed solum defendet se et bona sua tunc non licet sibi iniusticiam suam capere et capti retinere quia solum licet sibi se defendere cum moderamine inculpate tutele. C. unde vi. l. i. de resti. spoli. olim. Subdit quod si iniusticiam suam sibi non competit vi. bo. rap. nec iniuriarum quia obstat exceptio parit criminis hec omnia ut dixi no. juno. in c. sicut de iure iuran. Deum dictum juno. pocius vni indistincte quia dominus propter delictum per constitutionem suam potest quod pocius domino sue rei et in aliam transire. Sed cum autem dictum non credo verum in distincte ymmo credo quod si clausas recognoscens supiotem de facto inducat bellum. Alii etiam non recognoscunt et sic quibus sit hostis populi romani quod sine aliqua constitutione non dicat locum quod in bello indicto ex edicto pocius. Nam hoc pocius ex iure gentium antiquis moribus introducto salvo quod de pociis quia modernis temporibus non procedit quod capti in bellis efficiantur servi nec vendantur nec in talibus hodie locus est postliminio. Et tamen dictum legendo illam decretalem aliqui reponebant per rationem illam. Nam spoliatus ante bellum est restituendus nec opponi potest exceptio temporum ut in c. in lris et c. jtem cum quis de resti. spoli. Nec excipiet pocius spoliatus de crimine nec de alio et maiori. Tunc scribendo credo saluari posse saluari posse glo. juno. duobus modis. Primo quia non loquitur juno. in casu in quo spoliatus ultimus intentet interdictum et si vi. ymmo loquitur in casu in quo intentat vi. bo. rap. vel iniuriarum que ut clare videri possunt vel dic quod juno. non intelligitur quod opponatur exceptio criminis in modum criminis sed in modum alterius spoliationis de quo excipi potest contra agentem etiam in terdicto recuperande ut repellatur exceptio spoliationis ut probat tex. in c. sup spoliatio de ordi. co. Pondera quod dixit bar. in l. hostes ff. de captivis et postliminio. vide bar. in l. diuus. ff. de iure fisci. Et bar. in l. qui a la tronibus. ff. de testis. Et abb. in c. l. de consensu infidelium vide glo. in c. l. ius militum l. di. vide bar. in l. nalem. §. si. ff. de acquir. rez do. bar. plene in l. si quid in bello. ff. de captis vide quod dixit Jo. an. in rubrica pocius rap. bal. in l. nam et fuis. ff. de negot. gest. bal. in c. l. de militibus usuelo qui contra est et bal. in

Lab hostibus la. 1. in. l. cas non. C. de capti-
nis p ange. in dñp. renouata guerra p bmo.
in. c. olim. e. li. de resti. spoli. p abb. in. c. sicut
1. j. in. l. i. col. de iure iuran. vide ange. in. 6
Jus autem gentiū iusti. de iure n. l. in. l. i. col.
1. ange. in. 6. ab hostibus iusti. quibus modis
ius patrie po. soluitur 1 pondera an in foro p
scientie liceat capta in bello retinere. Uide
bal. in. ca. l. de milite usul. qui contu. est. Et
an hec habeant locum in bello civili. bal. in. l.
i. in prin. de cadu. tollen.

Capitulum lx.

Ulterius quero an istis bellis q
facit una ciuitas contra alia pos-
sint dici hostes 1 serui efficien-
tur capti 1 dominus eorum que-
ratur. apparet q non. l. si quis in genuam in
ff. de cap. In contrarium uidetur. nam
quelibet ciuitas per se facit populum 1 sic ui-
detur q sint hostes sicut populus xpianus 1
sarracenus. Sol. quando est contentio inter
duas ciuitates que sunt sub eodem domino si
est locus captiuitati 1 postliminio ut. l. si ge-
in genuam. ff. de capt. Sed quando est con-
tentio inter duas ciuitates que non recog-
noscent superiorem 1 pono ut tollatur. ome-
dubium q quolibet sit hostis imperii q rebel-
les tunc iure gentium antiquis moribus itro-
ducto est locus captiuitati 1 iure postlimi-
nii. Sed secundum mores ipsorum 1 consue-
tudinis antiquitus obseruatus intra xpianos
quantum ad personas non sequatur postlimi-
nium nec uenduntur persone nec serui effici-
untur. Pondera q bar. in. l. hostes. ff. de
captiuis in fine sentit id quod proauus meus
hic bar. in. l. nullus. C. de iudiciis etc.

Capitulum lxi.

Ed an capta in bello efficiantur
captiui uidetur q sic per. l.
si quid in bello. ff. de cap. Cō-
trarius uidetur probare. l. si cap-
tiui. ff. e. titulo Solutio. l. si quid in bello
loquitur in rebus mobilibus. Sed oppo-
q mobilia publicentur ut. c. dicat xxiii. q.
i. So. dico q efficiantur captiui. sed te-
netur ea assignare duci belli qui distribuit se-
cundum merita. Et hoc procedunt in his in
quibus nō uendicat sibi locum postliminium
l. ii. ff. de captiuis. Pondera que allegauim
supra ad hoc propositum in ca. l. viii. post pro-
prium meum preclarum uirum.

Capitulum lxii.

Iterum queritur an in bellis sit
licitum insidius uti ad uictorias
consequendam uidetur q sic.
Nam inquit ang. in li. questionis.

cū bellum iustum incipitur utrum a pte pug-
net quis an ex insidiis nihil ad iusticiam in-
terest hoc probatur per id quod habetur io-
sue viii. ca. In contrarium uidetur. nam
scribitur deuto. xvi. ca. quod iustum est in-
ste exequi is. sed p insidias est iuste exequi
cū sapiat uolus taliter agitata p act. 8 dolo
ascidit. ff. 1. C. 8 dolo p totū. pterea insidie
spugnat felicitati 1 rumpunt fidē q fruanda
est hosti. 1 ang. ad host. cum trāsumptis in
can. xxiii. q. i. noli. xlii. q. v. q. dolo patri.
Preterea scribitur 2 Machi. vii. c. Que ual-
tis ut faciant uobis homines ros eisdem faci-
te ut in prin. decretorum 1 hoc obseruandum
ad omnes pimos. Cum igitur nullus uellet
insidias sibi fieri ergo nec aliis facere debeat
Solo hic attendendum est q ppter insidie
dicuntur que tendunt ad fallendum aliquem
Sed dupl. contingit aliqē falli vbo 1 fac-
to alterius vno modo dicatur falsum ut deci-
piatur uel aliquid pmissum non artfidatur.
Et tunc sic utendo insidias semp est illicitus.
Nam inter hostes sunt quedam federa que f-
uanda sunt ut inquit Ambrosius in li. 5. offi.
Alio modo potest falli dicto uel facto ut quia
non aperimus sibi ppositum nostrum nec le-
creta nostra 1 hoc modo licet fallere. Nam
nec semper sacre scripture sunt pandēda ne
irrideantur iuxta illud 2 Machi. x. c. Nolite
semen dare canibus. x. li. Est pccipuum mā-
datum intra militaria documenta ut secreta
non reuelentur hostibus. Et sic etiam decia-
rat beatus Thomas fa. q. xl. 1 glo. xlii. q.
ii. dominus dicit indistincte uti posse dum-
modo non rumpamus fidem ut. c. noli eadem
cā 1 q. i. hoc idem tenet glo. in. c. utile. xlii.
q. ii. aliat colum in mandatis. xliii. di. ff. de
cap. l. nihil. l. inter est. C. de pñ. l. ii. xliii. q.
viii. dixit de conse. di. ii. dixit dominus. Don-
dera qd dixit glo. in. l. i. in verbo hostem. ff.
de dolo 1 uide ibi bartolum.

Capitulum lxiii.

Consequenter uidendum est An
in festis licitum sit bellare 1 ui-
detur q non quia festa sunt in-
ducta ut qd uacet diuinis 8 cō-
di. iii. pñunciandum de fer. c. ultimo. C. eo-
ti. l. dies 1. l. i. 1 pbat exēplo. xx. c. De
terea pñae lviii. c. reprehenduntur qui in die-
bus ieiunij repetunt debita 1 cōmittunt lites
pugno pcutientes multo magis igitur in festis
bellantes reprehendendi sunt. Preterea ni-
hil iordinate agendum est ad uitandum intē-
pabile incōmodum ergo. Preterea uidet
tex. in caplo primo de treuga 1 pace. In
contrariū uidet. Nam legitur primo macha-
beorum. c. ii. Cogitauerunt laudabiliter dicē-
tes. Omnis homo qui uenit ad nos in die belli
in die laborum pugnemus aduersus eum.
Solo beatus Thomas scda scda. q. xl. 13

¶ in festis bellari potest necessitate urgente ipsi autem cessante cessandum est q̄ probat p̄ id quod habet Jo. vii. c. xxi. ubi indignamini qui totum hominem sanant in sabbato. Et sic inferi medicos medicari posse in festo ppter salutem privatam hominis multamagis autē procuranda est salubritas publica. gloss. 1. bo. in. c. l. de treuga 1. pace. Dicunt q̄ die Jovis non est bellandum quia dominus illa die ascendit ad celos 1. cenam fecit cum discipulis de col. vi. l. 1. 1. cons. vi. iii. l. i. de Ueneris non ppter recreationem passionis domini die Sabbati non q̄a ea die discipuli latitaverunt propter metum iudeorum 1. quia corpus dñi latuit in sepulchro de cons. di. iii. sabbato. die Dominico non quia tunc omnes insignes fecit dominus illa die lxxv. di. quo die 1. ppter recreationem resurrectionis. Credo ponderandam necessitatem urgentem ut supra tactam est tex. nicolai pape est in. c. si nulla xxiii. q. viii. Pondera quia dominus abbas moderni hoc examinant in capitulo primo treuga 1. pace.

Capitulum lxxiii.

Consequenter queritur quid si aliquis in bello totum suum iter esse est consecutus. an iterum possit in ludicio convenire suū ad mercurium vel adhuc possit bellum indicare contra eum. videtur q̄ iterum possit convenire. Nam captam in bello est pena cōtumacie ergo nihilominus agere potest. ff. de ta. ex bi. locum. §. pe. Item res non est soluta pro debito ymmo in bello questum dominus xxiii. q. v. dicat. 1. q. vi. si de rebus. ff. de acq. ren. re. do. l. naturaliter. Item q̄ contra contumacem in infinitum iurari potest. ff. de rei ven. l. qui restituere glo. in ca. dominus. xxi. l. q. ii. tenet contrarium per regulam bonae fidei. ff. de regulis iur. Ego non credo q̄ glo. vera sit indistincte ymmo distingui debet ab eodem an ab aliis. Si ab eodem procedat opinio Jo. Si ab aliis aut habetibus casus ab eo 1. tunc idem ut. C. de evict. l. emptori alias haberet regressum contra primum ut. C. de usuris rei iudi. l. ii. §. finali alias autem ē licitum pluries idem solui. ut. l. iii. §. con. dempnate. ff. de ta. ex bi. 1. iusti. de. §. si res Sic no. in regula bonae fidei de reg. iur. Et ita etiam no. Jo. fuit in dicto. c. dominus.

Capitulum lxxv.

¶ morientes in bello solentur
Sed morientes in bello ecclesie pro ipsius defensionē consequuntur celeste regnum. Hoc probat duo textus specialiter ca. olim xxii. q. viii. 1. fuit leonis pape directum ad regem francorum 1. ca. omnium xxiii. q. v. 1. fuit nicolai directum exercitui francorum decedentes

autem in aliis bellis aliis iustis etiam solentur dummodo sine mortali decedant peccato de pen. di. v. fratres.

Capitulum lxxvi.

¶ si liceat bello corporali deinde re possessiones ecclesie 1. sup hoc convocare milites planum est q̄ sic probant tex. xxiii. q. iii. c. maximus xv. q. vi. aut vs adrian. xxiii. q. viii. c. igitur 1. c. octavo 1. glo. magis i. cass. auctoritate. q. vi. pbat tex. in. c. dilecto. de sen. excōl. li. xv.

Capitulum lxxvii.

¶ si liceat episcopis ad bella accedere sine licentia pape. Dicunt quidam q̄ nō indistincte p̄ cass. qui aliter expresse hoc dicunt xxiii. q. viii. q̄ auct. 1. c. si nobis 1. c. si quis episcopus licet illa capsa habeat nuncios inellectas tamen hoc credo neq̄ si uocentur vel sponte ad bella aliena maxime secularia accedant secus si defendant iura sua

Capitulum lxxviii.

¶ si prelati p̄ temporibus que tenent ab imperatore teneantur solvere tributum p̄ bellis ab eo indicitis. Et dicendum q̄ sic ut pbat xxiii. q. viii. c. l. §. ecce cum duobus capitulis sequentibus usq̄ ad §. fūla. Pondera q̄ habet in. c. si tributum 1. in. c. magni. xl. q. i.

Capitulum lxxviii.

¶ si captis in bello iusto sit misericordendum Dicendum q̄ sic nisi pariendo timeatur perturbatio pacis probatur in. c. noli. xxiii. q. iii. in fl. 1. per illud. c. expostum ut intelligat bug. fuit amputatum caput Conradino.

Capitulum lxx.

¶ si ecclesia debet indicare bellas iudicia. Dicendum q̄ non cum ubi p̄ parati sunt servare nec plerumquantur christianos. Secus de la racenis qui prosequitur christianos. hic ē tex. xxiii. q. vii. dispar 1. ibi ne. glo. q̄ nec etiam la racenis forent indicenda nisi christianos prosequerentur.

Capitulum lxxi.

¶ si degentes in bello qui pugnare non possunt gaudeant immunitate bellantium 1. dic q̄ sic diuino alias consilio sunt utiles ut nō in

capitulum ex multis de notis. Pondera quod dixit dominus abb. in dicto c. ex multis. f. q. pollens consilio non dicitur inhabilis ad pugnandum. licet corpore pugnare non possit. unde ex solo consilio quis incurrit irregularitatem ex delicto homicidio per cap. si quis uideam. l. di. t. aliis uiribus ibi per eum allegatus. Unde non uiribus ac uelocitatibus ac celeritate corporis res magne geruntur. sed consilio et cunctis rebus sententis quibus non orbi sed augeri cunctis solet. ita preclare scriptabat flos eloquentie in libro de senectute

Capitulum lxxii

¶ Si licet poelatis ratione tempo
ralis iurisdictionis bella indi
cere ⁊ ad ea interesse ⁊ coarta
ri ad prelium. dic q sic ut notat
Jnno. in ca. quod in dubiis de penis. Pon
dere q hosti. in dicto ca. q in dubiis sequit
doctrinam Jnno. dominus abb. ibi concludit
q si causa defensionis adest ⁊ non est necessi
tas in uitabili. tunc si sequitur mors ex p
cussione sua efficitur irregularis. Secus si si
ex percussione sua sed alioam diri. b. i. c. lii.

Calixtil

¶ Tunc licet preloso pro interia sub
diti sui de quo non sit iusticia bel
lum indicare et alios qui interiam
res in bello capere. Et dic qd sic
ut no. Inno. in capitulo dilectus de appell.
et capitulo sicut de iure iurando.

Calxtruis

¶ delegatus pape possit bellum i
dicere hoc est an possit inuocare
brachium seculare. Questio est
vulgata ⁊ tractatur in ca. signi
ficasti de offi. dele. per Inno. Pondera qz
comūiter concluditur q non pot inducere
bellum contra resistentes qz hoc ē solius p
cipis xxiii. q. li. ca. primo ⁊ tunc nec mouere dz
arma. sed dz recurrere ad brachium seculare

Captm .Lxxv.

¶ bella que indicit ecclesia con-
excommunicatos sunt meritoria
Et dicendum est qd sic Et in il-
lis licitum est peccatis ⁊ singul-
bortari alios ad pugnandum probat tex. c. xlii
q. v. ad omnia ⁊ ca. seq. ⁊ q. vii. c. ligatur
infra ad. §. ecce. ⁊ q. iiii. ca. sicut excellens

Cap'tm lxxvi.

Dilectanter queritur quot sit
genera bellorum coepitius v^o q^u
reperitur in iure expellum. Solo
Sex requiritur in iure exp^la.

Primum romanorum appellatur qđ fideles contra infideles ⁊ hoc iustum est de her. excoicat. li. Et dicitur romanum quia rome caput fidei xxliii. q. i. hec est fides ⁊ c. qm̄ s̄ fima trini. c. penr. Sic potest intelligi l. hostes. ff. de capt. Secundum qđ sit iustitiate iudicis legitimam habentis meri impugni contra contumaces ⁊ rebelles ut l. continet ff. quod me. cā. lii. ⁊ l. liii. de iur. o. iudi. C. ne qs in sua cā. l. una. Et hii pprie s̄ dñr hostes nam quod de suo ad nos puenit nostrum efficitur non autem econverso. Sic intellr l. v. §. in pace. ff. de capt. iuis. Tertium dicit bellum presumptiuum qđ faciunt iudices inobedientes de pe. di. iii. §. i. ad fi. de mīa. ⁊ obed. c. si quis nenerit. ff. de rei nen. l. qui resti tuere. ff. ne ius iur. ei. l. iij. C. v. sedic. l. i. in §.

Quartum dicitur bellum qđ licitum est quantumcuq; iurisauctoritate concedet. Et est licitum quoad illum cui conceditur. xxii. q. ii. dominus de sen. excōl. c. si non. i. §. nec ille. C. quando lice. cuq; sine in. vin. l. i. T. d. ii. T. etiam pxiimi T vicini ut de sen. excō. de lecro li. vi. Quintum illicitum quoad illos q; hoc faciunt contra auctoritatē iudicis T iuris ut de senten. excōl. ppendimus T. c. contingit T. c. audacia Sextam voluntarii quo utuntur principes q; non est licitum cū non nemini sine principis auctoritate licet arma portare. C. ne armorum usus in rubeo T nigro li. x. in aut. de ma. prin. collat. iiii. In aut. de armis col. vi. ymmo contra sentientes incidunt in. l. i. d. mēf. ut ff. ad. l. inf. mēf. l. iiii. Septimum dicitur necessarium T licitum quod faciunt si teles iuris auctoritate se defenden to contra ipsos inuadentes. Nam vim ui repellere licet. ff. de iusti. T iure. l. uti nim cuq; sp. de his p hosti. de homici. p baina li. vi. p archi. in. c. iustom. xxiii. q. ii. Ex his inferitur que bella sint illicita T que licita Nam licita dicuntur rōe las dicentes illius contra quam T ratione rei T cause T iure p mittentis illicita econtra causa autē una generalr iustificat. l. cōtumaria iniuste resistē tis cū eni ab eo qui obnoxius ē iusticia bñ si pōt tūc l; belli indicē nā i subsidii recurrē ad illud iusfragium xxiii. q. i. quid culpatur. T ca. noli xxiii. q. viii. si nulla. ff. de iust. l. usufructus. Et de hoc q; scilicet sit liciti mo. per Jmo. de restit. spolia. ca. olim. Et p hosti. la summa de trengs T pace. §. li qui in stum per beatum thomam fa fe. xl. q. arti. p mo l. i. T. lii. p egidii l. i. de regie prin. in fl.

Сарҫм Іххvü.

3lo supra tercio proximo princi
pali tractatu de bello uniuersali
corporeali. Restat nunc quarto

videre si bello particulari quod sit ob tutelam
huius et ipsius tractatu sic procedam. Nam pri-
mo demonstrabo quid sit. deo quot sunt spe-
cies eius. tercio quo ordine inductum sit.
quarto quibus liceat. quinto contra quos
sexto pro quibus. septimo qualiter liceat. oc-
tavo quis sit ipsius finis.

Capitulum lxxviii.

Inter primum queritur quid sit
bellum ob tutelam sui particulari
inductum. dico quod est contentio
ex orta propter diffinitionem huma-
no aspectui presentatum ex violentia parti-
cularium illatione proveniens ad ipsius ex-
clusionem tendens. hec probantur mentali-
ter per textum in l. ut uim. ff. de iusti. et iure. l.
scientiam. §. qui cum aliter. ff. ad l. agli. et l.
l. c. unde ui. et l. iii. §. si quis. ff. de ui. et ar-
ma. et ca. olim de resti. spolia. Et dixi contē-
tio. Nam contentio ponitur pro genere ut
posita in diffinitione belli generaliter sum-
pti ut super primo tractatu in principio. sed
do dixi exorta propter diffinitionem et illud po-
nitur loco diffinitionis. Nam per hoc differt a
bello universalis et aliis speciebus belli. tercio
dixi ad ipsius et hec est causa finalis ipsius belli.

Capitulum lxxix.

Inter secundum queritur quot
sunt ipsius species. dico quot sunt
due. Nam quoddam iustum quod-
dam iniustum. sunt etiam diuisi
bellum universale. bellum autem particulare
iustum est duplex. nam quoddam sit propter
tutelam sui corporis uel ad herentium sive
ringentium uerum corpus. et de hoc in pre-
ter tractatu discutiam. Aliud sit propter
tutelam corporis militici uel partis ut dicimur
in universitate que appellantur membra et
partes. ff. de uniuers. l. i. ff. de municipal. qd
maior. ff. de mun. et hono. l. sed si hoc. §. qui
manumittitur de excess. p. la. ba. cum dilec-
ta et ibi no. Si ergo universitas propter de-
fensum cuius sui ab extraneo oppressi deficiente
iusticia iudicis opprimentis bellum indicat.
hoc appellatur particulare propter tutelam
militici corporis prime partis et hec appella-
tur repugnans. de qua in auc. ut rem pigno.
per totum et in his ca. uno li. vi. Et de hoc
bello dicitur in tractatu proximo. Bellum
autem iustum particulare ob tutelam ueri cor-
poris in dictum est contentio exorta propter
diffinitionem humanam appetitui presentatum pro-
uens ex illatione uolentie particularis a pri-
uata uel publica persona extra officium ius-
te offerente ad ipsius exclusionem tendens
cum moderamine inculpate tutelae et hec pro-
batur in l. i. c. unde ui. cum ibi no. iustas
autem ubi predicta uel aliqd predictorum officie

ut in sequentibus declarabit. Didera uerum
cum moderamine inculpate tutelae. Et uide
omnino bar. in l. ut uim. ff. de iusti. et iur. in
fi. et bar. post glo. in l. i. c. unde ui. in l. iii. col.
et d. abb. post alios in c. significasti de ho-
mici. in l. iii. col. et abb. in c. suscepimus. co-
ti. in ii. col. uide parum meum in de l. de
homicid. post gonge. abba. in c. olim de resti.
spoli. in x. col. uide bar. in l. i. iur. ff. de sicca
aug. in §. ius autem gentium in l. iii. col. de
iure naturali gen. et ciuili uide plene per parum
meum. §. in c. quod incipit circa septimum
principale et c. cum se. capitulum ubi discurret per
omnes species moderaminis inculpate tutelae
et doc. tangant in locis aliis.

Capitulum lxxx.



Inter tertium queritur quo iure hoc
procurat et competat glo. que est
in l. ut uim. ff. de iusti. et iur. sup
vbo iur. dicit iure fori non iure celi
Si gl. intelligit quod iure fori pueniat hoc cre-
do quod glo. non dicat uerum. Sin autem glo.
intelligat quod iur. fori iudici possit impuni tunc
credo quod glo. dicat neque. In eo autem quod glo.
dicat non iure celi credo quod glo. dicat falsum
Redeo ad singula et dico quod bellum ob tutelam
sui puenit a iure naturali non autem a iure
positiuo ciuili uel canonico quod hoc sit uerum
probatum sit. Nam natura pducit ad cuiusque
ex tendit in ipsius conseruationem donec se
extendant uires agentis naturalis et nititur
in expulsionem cuiusque contrarii. Et si se-
cus contingat hoc contingit propter defectus
uires agentis et sup habundantiam agentis
In contrariam ut quod hoc contingit ex in-
tentione agentis naturalis pducti et conser-
uationis ymmo contra intentionem cum tempore
contrarius resistit quantum potest hoc patet
ex sententiis inducendo per singula elementa-
ria. Nam in elementariis que agunt et pati-
tur ad inuicem hoc patet. Nam passim resistit
agenti et reagit in ipsum solum ad finem con-
seruationis sui esse destructionem agentis in
contrariam et agens coequali. Materiale
sup agendo repetit ut inquit philosophus secundo
de generatioe et iii. philosophorum hoc patet in
istis inanimatis hoc in plantis. Nam prima
ipsarum natura in conseruatione ipsarum et
uitam et contrarium expulsionem hec in
brutis. Et quare non sit in rationabili crea-
tura hoc contingat ymmo fortius cum ipsa
ceteris sit nobilior et ad ipsam ut ad finem omnia
ordinantur ut l. in pecudum. ff. de iuriis.
Propter ergo defensum ex instinctu tali
hoc probat textus in de p. pastoris. §. ceteri
de re iudi. ubi dicit textus. Defensio que a iure
puenit naturali hoc sentire uidetur glo.
que est in l. scientiam. §. cui alr. ff. ad l. agli.
Ita dicit textus. adducit periculum nulli ratione defen-
dere permittit. Concludo ergo ex hoc

peſſa quod hoc bellum reſtringendo ad inductum ob tutelam corporis ſuperuenit ex iure naturali ⁊ ipſius inſtinctu. Sed ius ap- poſitum approbat vel non prohibet ut dicit glo. in l. ſcientiam. §. qui cum aliter. Nam aliqua provincia ex inſtinctu natura iure po- ſitum puniunt ut patet in carnali copula. nā ſimpliciter coitus puenit ex naturali i dāp- nat lex ⁊ in hoc ius poſitum limitat ⁊ q̄- liſcat actus puenientes a iure naturali ſic inſingulis actibus natura puenientibus. Nam naturaliter quis appetit cibum potus ⁊ tamen lex canonica limitat. Nam quod- dam cibus certis temporibus inbibet. verum eſt q̄ lex poſitum etiam qualiſcat modum ū- ſenſe ut patet in l. i. C. unde ui. ⁊ patet p i- fra notanda. Concluditur igitur hoc pue- nire a iure naturali ſeo approbato a iure po- ſitum tam civili q̄ canonico ⁊ etiam qualiſ- catum ⁊ modificatum eſdem. Et hoc forte ſaluari poteſt glo. que eſt in l. ut uim. ⁊ ſic in- telligatur. Sed dicebat glo. non iure ce- li uidetur ſentire q̄ de iure diuino non per- mittatur uim ui repellere. Per hāc opi. glo. uidentur uidentur ſtare tex luce vi. Et q̄ percuſſit in unam maxillam p̄bere ei ⁊ al- s. xxi. q. i. in principio. Scribitur etiam ſi q̄ augurauerit te mille. mille paſſus uade cum eo mille paſſus Jo. vi. ⁊ mathei vi. Scribi- tur etiam ad roma. xii. non uos defendere ⁊ dare locum ire chriſtus etiam dixit petro uo- lenti cum defendere. Convertere gladiū tuū in uaginam Mathei. xxvi. ⁊ habet xxi. q. i. in principio hec potuerunt mouere glo. ad- tenendum q̄ non liceat iure poni. Sed credo q̄ glo. non dicat uerum quod aperte de monſtrari poteſt. primo ſic ille actus eſt i- citus iure diuino qui eſt conſonans caritati. i. Sed deſenſa ſui ipſius eſt huiusmodi ergo ⁊c probatur maior nam caritate poſita excludi- ditur quilibet actus legi diuina reprobos q̄ cum ipſi ſe non compatiantur cum reprobatū ſit ⁊ ipſa ſit fundamentum cuiuslibet liceti probatur hoc de pe. di. ii. ſed radicata ⁊ ca- ritas eſt ut mihi uidetur tex. in. c. q̄ radix ea. di. probatur minor nam p̄ceptum carit- atis eſt diligere proximum ſicut ſeipſum ut capitulo proximis ⁊ ca. proinde de pe. di. ii. ergo implicat dilationem ſui. ⁊ ſui conſerua- tionem ſi ſic ergo deſenſam ergo iure poli- cet ſeipſum defendere. Preterea lege di- uina licitum eſt proximū defendere a morte Etiam contra uoluntatem ſuam. ergo multo fortius iure diuino licet ſeipſum defendere q̄ ⁊ p̄ducta ſupra proximo. probatur a ſice- des p̄ tex. xxi. q. i. i. p̄ pietas ⁊. queſt. i. diſplicit. Preterea lex diuina inbibet quem uoluntarie tendentem ad deſtructionem ſui ipſius hoc ſolum intendendo. Nam ſi ordi- nate tendit in aliū. l. diuina approbatur licet iſtud conſequendo conſequenter ſequatur de- ſtructio hoc non eſt inbibitū utpote quis ut

conſequatur ſtatum beatitudinis affligit cor- pus ſuum Nulli dubium quin afflictio ſit cor- poris deſtructoria cum non intendit in hoc finaliter ſed in ſigam uiciorū carnet detractio- nis uoluntarie ppter fidem catholicā Nam ipſi non intendunt finaliter ad deſtructionem ſui corporis immo deſenſa ſidei p̄o qua uolū- tate exponunt ſe morti temporali q̄ licet lege diuina. Sed ſe non deſendens a morte cum poteſt ſe uoluntarie occidit ⁊ in deſtructionem ſui tendit ergo. l. diuina inbibitum p̄bat ma- ior. Nam. l. diuina dampnati reputant ſi ſe ipſos occiderunt ut dicimus de iuda ⁊ ſi ſi- phatur minor. Nam ſe nō deſendens a morte cum poteſt nec ſubit aliquis de caſibus ante dictis nec hoc pueniat ex paſſanimitate ſui mortem appetit ⁊ palium ſe occidit ⁊ ſic p- inde ac ſi per ſe ipſum. Iuxta regulam qui p̄ aliam de reg. iur. li. vi. Preterea lex diuina non deſeruit tota? actus puenientes a iure naturali ſed ipſos modificat ⁊ reformat hoc patet per ſingulos diſcurrendo. Nam nō pe- nitus inbibet cibum ⁊ potum nō copulā nec ſi ſi ſed ipſos actus modificat ⁊ reformat ex- tremitates retinendo ⁊ medium approbando ut etiam lex moralis ſcōo et hic. iii. at. Si lex diuina inbibet tota? deſenſes ſui ipſi? cui actus ille pueniat ab inſtinctu nature tota- liter deſtrueret actum nature q̄ eſt abſurdū ut. 3. Preterea lex canonica hoc limitat er- go lex diuina non inbibet p̄batur antedecē- p. c. olim de reſti. ſpoli. ⁊ clem. paſtorat. §. ce- terum de re. iudi. clarius p̄ clem. in. c. ſi ſuri- oſus de homici. Nam lex canonica ſuq̄lternat legi diuine ⁊ ſibi inuicem contradicere non poſſunt. Nam ad eundem tendunt finem licet uarie. Nam lex canonica tractat de guberna- tione monarchie mundane ut ſocietas hūana conuerſetur in uniuersū q̄ etiam tractat lex civilis. Sed canonica ulterius tendit. ſ. diſ- ponendo ⁊ p̄parando ad ſtatū beatitudinis eterne in qua tēdit lex diuina. Et ſic neceſſe eſt idēmitate finis atenta omne inbibitum lege diuina fore inbibitū lege canonica ⁊ ſic p̄termiſſis aliis que inſinita poſſunt induci Reſtat concludendum q̄ glo. non dicat neq̄ cum dicit iure celi non p̄mitti deſenſam ſui- ipſius. Ad auctoritates autem in cōtrariū inductas Rōdum eſt ut reſpondet magiſter grāuor. xxi. q. i. §. li is ita uidet q̄ itellāſ ū interior cordis p̄p̄tōe non aut de interior corporis aſtrictione. Nam interior debet humilitatem cordis habere ut probat auguſt. in ſermone de puero centurionis ſic ſquies paratus debet eſſe ⁊c uide i capitulo paratos xxxiii. q. i. Ex his inferitur tertium uide licet unde inſurgat hoc bellum ⁊ quo iure p̄ mittatur ⁊c. Proſecto ego in omnibus ſe quorū opi. proam mei qui loquitur longe ſup̄ enter ⁊ q̄ iure naturali ſit introducta deſen- ſio. etiam tenuit bar. l. ut uim. ff. de iuſti. ⁊ in re ⁊ ibi uide bal. ſed de materia uide etiam

bar. in. l. filius. ff. de dona. aliter iura bar.
in. l. facinus de iure filii. x. bar. in. l. cum
mulier. ff. sol. metri. in. l. col.

Capitulum lxxxi.

Itaque quartum et licet est videndum
pro cuius evidentia premittitur quod
aliter est querere quibus competat
defensio sui ipsius. Et aliud est que
nec quibus competat indistincte indictum
propter defensionem. Si queramus quibus
petit defensio dico quod omnibus entibus na-
turalibus gentibus ex corruptibilibus. Celesti-
bus non competit defensio propterea quod non
possunt pati ab aliquo contrario agente cum
illa corpora non sint receptiva peregrinorum
imperfectorum. ut ait philosophus secundo celi et mi-
di. cum sint sine materia que est mater gene-
rationis et corruptionis ut ibidem. Et sic non
est opus defensionis cum sint in captivitate omnium
autem naturalium competit ex principio na-
turalibus defensio cum sint passibiles. et pue-
nit illa defensio ex iure naturali quod est ius
quodam in istis rebus similia de similibus pro-
creatis. Nam similia pro creando conservant
seipsam in specie quod fieri non potest perpe-
tuo indi individualiter. Individualiter agendo.
videtur corrumpere contrarium sibi resistens
et e contra. Et iste est primus modus iuris na-
turalis de quo glo. in ca. ius naturale. prima
di. et notari consuevit in. l. i. §. ius naturale.
ff. de iusti. et iure. Dic ergo si defensio com-
petit quicunque materialibus naturaliter et
peruenit ex viribus a natura collibet enti in-
sistit. et quilibet sensibilibus idicere singula na-
turalia discitendo. Sin autem queramus
quibus competit bellum scilicet diffinitum.
tunc dico quod solis hominibus et non aliis quod
probat diffinitio belli cum dixi disforme appe-
titui humano propositum etc. Et hic connotum
est an omnibus hominibus competat. et
ideo an clericis competat.

Capitulum lxxxii.

Primo quero an clericis liceat
bellum particulare indicere re-
sistendo et repugnando videtur
quod non per ca. suscipimus. de homici. et per. c.
sedicionarios xvi. di. probant tex. xxi. q.
viii. §. i. et cum a iudicis. et ca. sequen. usque ad
§. bis ita. respondetur. probatur in ca. come.
more eadem causa et questione. Quod licet
ut probatur per ca. olim de resti. spoli. et si ne-
ro et ca. ex tenore de sen. ex comuni. i. di. ius
naturale. ff. de iusti. et iure. l. ut iur. ff. de iur.
et iur. l. i. §. si quis clarior tex. in clemē.
si furiosus de homici. Super hoc fuerunt opi-
ones quas recitat glo. xxi. q. i. in summa. Nam
aliqui dixerunt quod nulli etiam layco licet nisi
si repellere repugnando. hanc opinionem repbat

clemen. nostra si furiosus de homicidio.

Alia quoque laycis licet repugnare clericis si
et hoc eodem modo laborat. Alia dicit quod si
nisi inferatur persona licita sit ut repellere
etiam repugnando etiam clericis hoc probat
clem. predicta. Sin autem rebus inferi tunc
licet. An autem hoc licet sit verum infra
subiungendo baganovit dicere quod in nulla ne-
cessitate positus etiam si aliter eandem si possit
non debet aliter occidere ymmo potius debet
se permittere occidi Ita no. in. c. de bis. l. de
glo. i. no. contrarium et in. c. sicut dignus de
homici. in hoc non infuso quoniam ut dixi est
tex. in clem. si furiosus de homici. et si non foret
tex. super hoc expresse disponens per vel contra
hoc esset tenendum per rationes quas induci ad
probandum hoc esse inhibendum. l. divina. Pro-
pterea quod dicit. d. abb. in. c. significasti de homici.
in pen. et vide eundem ibi in. iiii. col. in fi.
et in pen. col. vide. d. abb. in. c. olim et resti.
spo. in. xii. col. vide. d. abb. in. c. sicut dignus
in. c. de homici. in. iiii. col. vide. c. de eo. et gl.
in. c. de bis de fo. l. di. ibi doc. etc. vide abb. in
c. i. de cleri. pugna. in duello.

Capitulum lxxxiii.

Secundo quero An liceat clericis
se sic defendere etiam repugnando
et occidendo et an hoc liceat
sibi in ecclesia et videtur quod non

Nam licet lex permittat generali-
ter certos actus. Inhibentur tamen ratione loci unde gene-
ralis permissio restringitur per speciem permissio-
nem ut. l. sanctio legum. ff. de penis. l. alimen-
ta. §. basilice. ff. de ali. et cibo. l. luxores. §.
felicitate. ff. de le. iii. et c. pastoral. de rapt.
Sufficit regula generi li. vi. Quod autem
multi actus lege permittantur generali qui
tamen ipsi interdiciuntur probat tex. in. c. decy
de iura. eccle. li. vi. et c. vendentes. l. q. i. et
go sic in proposito et multo fortius cum per hanc
actum possit perveniri ad pollutionem ecclesie
ut in. c. propositi de consue. eccle. vel alia. et
c. vno. et li. vi. Preterea rixae et excita-
tiones sunt generaliter interdictae cum sit species
rixae ergo. In contrarium videtur quia iuxta
hoc permittitur generaliter loquantur ergo
sic sit generaliter intelligenda. ut. l. i. §. ge-
neraliter. ff. de le. pstan. Tunc parte cre-
do veram cum iste actus insurgat ex iure naturali
nec repugnat legi divinae et ratio iuxta hoc indu-
centis subit generaliter non habita discretio.
locorum nam hoc inducit ius naturale ut quis
seipsam conservet quantum durat vires prin-
cipiorum naturalium. Et hoc ratio subest in ec-
clesia sicut alibi. Ad inducenda in contrarium
facile est respondere. Nam illi actus inhibiti
in ecclesia vel sunt de natura sui de genere
malorum vel sunt de genere permissorum ut con-
tractus tamen ipsorum exclusio ne sunt in eccle-
sia propter moram fruendi non inducti periculum

cum extra ecclesiam eque fieri possint ad li-
bitum contrahentium cum sint a p[ri]mo. nolit.
exposit facto necess[ar]i. ut. l. licet de act. 1. obli.

Est in p[ro]posito si si liceret in ecclesia vim
vi repellere ecce p[ro]ptam p[er]iculum quia statim
facilliter ad aliud cum dicitur sequi poss[et] pol-
lucio. Solutio fortius conferenda 1 ponde-
randa est hominis consecratio tam sit iure-
staurabilis q[uam] ecclesia que reconciliari p[otes]t.
Et forte dici potest q[uod] ad hoc ut polluat san-
guine iniuriosi non requiritur sanguinis in-
iuriosi effusio ut no. in. c. uno de consecrati-
eccl[esi]e. vel alta. li. vi.

Cap. lxxviii.

Terio quero quid de clerico cele-
brante An ei licitum sit dimisso
officio si innadatur se defendere
1 si occideret licitum sit conti-
nuatio officio celebrare. Primo apparet q[uod] si
debet discedere ab officio ymmo ipse tenet[ur]
exequi donec possit videri tex. vii. q. i. illud
1. c. nihil. Deteres t[em]p[or]alia sunt postpone-
da spiritualibus. xii. q. i. p[ri]mum de pe. 1 re-
mi. cum infirmitas 1 de epi. 1 de. lincinua.

In contrarium p[ro]bat tex. nos p[ro]pter impe-
dimentum temporale superveniens officium
inchoatum dimittit inexpl[et]us. Et p[ro]pterea
provident iura ut solus sit sacerdos in eccle-
sia ubi subest facultas honoris temporalis p[ro]bat
tex. in. c. statim alt. vii. q. i. illud 1. c. nihil ut
unus suppleat continuando ubi alter dimisit
nisi oratio miss[ae] sit cepta 1 non completa q[uod]
tunc alter reincipere tenetur cum illa non f[er]-
re recipiant divisionem ut in baptismo 1 eodie
xxiii. di. quorundam 1 ibi no. glo. in ca. nihil
etiam no. glo. Si aliquis innadat celebra-
tem ut ipsum occidat hic evenit impedimen-
tum celebranti ymmo periculum mortis ut
claret ergo licitum p[re]termittetur 1 per 2
sequens se ex periculo sibi occurrenti si p[otes]t
expedire etiam occidendo. Ad allegata i
contrarium facile est respondere. nam licet
spiritualia sint proponenda temporalibus in
genere tamen celebratio hoc casu non est p[ro]-
ponenda tamen hoc casu p[ro]pter dampnum
in re p[ro]hibe lex hoc p[ro]p[er]mittit quod non
contingit in spirituali postposito alio casu q[uod]
per aliam testaturari potest vel per eandem.
periculo excludo de secundo sine argumento
dico q[uod] si etiam occiderit se defendendo q[uod] po-
terit reassumpto officio celebrare 'dummodo
adint illa de quib[us] lo. cle. si furiosus. Na nul-
lum peccatum cum hoc fecerit legis auctori-
tate cuius auctoritate nemo peccat xxiii. q.
iiii. nullam irregularitatem incidit ut in p[re]-
dicta clemen. si furiosus ergo nullam videt
habuisse impedimentum cum possit celebrare
ut p[ro]bat cle. Hoc dictum p[ro]poni meli[us]
fert ut p[re]clarum 1 sequitur domus abb.
in capitulo clerici in principio ut vita 1 bo-

nestate clericorum ac.

Cap. lxxv.

Quarto posset queri argui 1 solui
de baptizante ordinante 1 con-
firmante 1 inungente etiam in
singulis sacramentis. An sit lici-
tum eor[um] collationem postponere etiam si in-
choaverit p[ro]pter tutelam sui. Et in omnibus
dic ut supra.

Cap. lxxvi.

Quinto q[ue]ro. Sacerdos baptizat
p[er]p[et]ui qui est in mortis p[er]iculo 1
incidit inuasio sacerdotis ut oc-
cidatur. Quid p[er]ligendum de in-
re an p[er]ficere collationem sacramenti ne o-
ccidat puer sine baptismo 1 ipse sacerdos occi-
datur vel econtra p[er]ligendum mortem p[ro]p[ri]as
evadere 1 p[er]mittere pueris mori sine baptis-
mate. Sic forma questionem de sacerdote o-
ferente corpus xpi infirmo in extremis labo-
ranti. Pro primo apparet q[uod] sacerdos potius
debeat se p[er]mittere occidere q[uam] p[er]p[et]ui sine baptis-
mo mori. Nam si puer moritur sine baptis-
mate moritur eternaliter ut p[ro]bat August. ad
petr. diaconum de conse. di. iiii. firmiter 1
c. regenerante. e. d. 1. c. nulla. e. di. p[ro]bat a-
postolus ad eph[es]. iiii. p[ro]pter delictum unus
omnes in damnatione sic originale peccati
cuius effectus non est extinctus p[er] sacramen-
tum baptismatis inducit condemnationem
eternam. Sed sacerdos solum temporaliter
moritur si aliis necessarius p[er] salutem imbut.
Sed mors temporalis postponenda est sp[irit]uali
Sic arguit August. xxiii. q. iiii. displicet 1
c. ipse p[er]petus. Ergo potius eligere debet sacer-
dos mori ne puer in eternum si p[er]eant. D[et]-
erres inter duo mala minus malum est elige-
re. xiii. di. nervi testiculorum casu si. et mi-
nus mali est mors t[em]p[or]alis q[uam] eterna ut cano-
lica p[er]petus 1. c. displicet. xxiii. q. iiii. mors aut
sacerdotis temporalis ergo p[er]ligenda. D[et]-
erres actu caritatis est q[uod] quis p[ro]ximi dili-
gat de. pe. di. ii. p[ri]mos 1. c. p[ro]inde 1. c. cari-
tas est ut mihi videtur ad hoc nisi sacerdos
eligat salutem eternam. Pueri vite 1 non
suam t[em]p[or]alem non diligit ip[s]e sicut seipsum 1
sic caritate carbit q[uod] p[ro]bat. Na vita eterna
sine cōparatione p[re]valescit vitam temporalis
ergo p[er]eligendo vitam temporalem sibi. vite
eterne proximi multo magis se diligit quam
proximum 1 sic remanet caritate vacuus.

D[et]erres illud p[er]eligendum est ad cu-
productionem pauciora mala sequitur h[ec] ad
mortem sacerdotis minus malum sequitur
q[uod] ad mortem pueri sine baptismo. ergo p[er]eli-
genda mors sacerdotis p[ro]bat maior nam
hec ex regula in moralibus q[uod] plura ceteris
paribus deteriores sunt paucioribus 1 magis
sagienda p[ro]bat in ca[us]e verum xiii. di.

probetur minus. nam si eligatur sacerdotis
uita sequitur duo mala uidelicet mors eter-
na pueri ut supra dictum est. et neglectus car-
animarum quod mortale est ut in casu sit
ars de eta. et quali. Sin autem preeligitur
mors temporalis sacerdotis non sequitur nisi
si illud malum scilicet temporalis mortis quod
attenta qualitate actus in se sine comparati-
one minus malum est morte perpetua ergo i-
serendum ut supra. In contrarium uiden-
tur textus qui loquuntur generaliter conce-
dendo cuilibet facultatem se defendendi in ca-
sa necessitatis sufficit cle. si furiosus leprosus al-
legatus. Confirmatur per iura que dicunt
caritatem incipere a seipso ut l. pates. Cde
seruit. et aqua et ca. petio de iure iuran.

Solutio proposita huius questionis et so-
lutionis eiusdem est examinare casus indu-
bitatos. nam sunt casus indubitati in thema
de proposito. Ecce si ponamus quod puer per alium
etiam laycum uel mulierem baptizari possit.
esto quod sacerdos dimitteret a sacramento col-
lat. non est dubium quod sacerdos deberet pre-
eligere salutem suam. ubi etiam puer uerisimili-
ter non posset uiuere usque ad expeditionem pe-
riculi et hoc uerisimiliter constaret non ha-
berem questionem dubiam quo minus sacerdos
haberet preeligere salutem suam nec rationes
inducte excluderent contra hunc casum.

Si poneremus questionem in adulto non an-
tem in fonte qui adultus licet non sapiat bap-
tismi fluminis tamen concedat si uitam ha-
beat fidem cum baptismo fluminis. Adhuc
non haberem questionem dubiam immo di-
cerem ut supra preeligendam salutem sacer-
dotis. Sed questio procedit in puero de quo
constat quod morietur sine baptismo. Si sa-
cerdos diuertat de hoc probabiliter dubitare
tur in primo casu ubi res de hoc constaret
dicerem preeligendam mortem temporalem
per iura supra inducta et fidem per ea que ha-
bentur vii. q. i. §. hinc in uer. cum uero speci-
aliter a contrario et quod ibi no. glo. Nam ubi
solus prelatus queritur nec ecclesia uita potest
esse tutius eo fugiente exponere debet se mori
pro ipsa ut ibi. hoc maxime procedant in
proprio sacerdote et parrochiano. et mouent
me rationes sapientis ad hoc inducte. ubi autem
foret dubium probabile de morte uel uita pue-
ri usque ad expeditionem periculi et constaret
de morte probabiliter nisi diuerteret. Ad hoc
crederem preeligendam mortem sacerdotis
cum in incertis non certis locis sit coniec-
ture l. continuus. §. illud. ff. de uer. obli.

Ubi autem probabile dubium foret hinc inde
crederem ut supra primo membro et hoc de
sacramento baptismi. In corpore autem
christi. si uera esset gloria que est in eo. quod i-
te de peni. et remissio. que dicit uiam non esse
sacramentum necessitatis tunc questio non est
multum dubia. Sed illa gloria non est uero immo
alia gloria. non contrarium in. c. mentis de trans

act. in prima gloria. et illa gloria est uero et non de sa-
cramentum. non de super rubrica pbar uidetur
tex. in. c. omnes de peni. et remissio. tunc adhuc hoc
supponitur per uero quod sit sacramentum necessitatis ad
hoc dicerem preeligendam uitam temporalem sa-
cerdotis moneo ex hoc quia etiam si quis de-
cedat sine corpore christi ubi per eum non stetit
et non contempsit non moritur eternam sicut
in baptismo. Idcirco in hoc casu non concla-
derent rationes. §. inducte. Idem dicerem in
sacramento penitentiae quia etiam sine oris
confessione decedens ubi per eum non stetit
sola contritionis uirtus saluat eum ut no. de
pe. di. l. In summa et in. §. his ita. Idem per
omnia dicerem in sacramento unctionis quod §.

Cap. lxxvii.

Exto quero nunquid monacho
liceat se fir defendere sine licentia
prelati sui uidetur quod non Nam
monachus non habeat nec uisum

debeat actum uoluntarium nisi de licentia sui
prelati quia sine licentia caret uelle et nolle.
xii. q. i. uolo. et c. et c. non dicatis de elect.
quorundam et c. si religiosus li. vi. et c. reli-
giosus de cura. At iste actus defensionis pue-
nit a mero libertatis arbitrio quia potest et
am uelle ergo non poterit sine licentia prelati
Preterea monachus est mortuus mundo. xvi
q. i. monachi et c. placuit ergo sibi si contem-
nat actus tendentes ad defensionem uite. Prete-
rea monacho interdicti sunt etiam actus in
uiam tendentes sine licentia prelati ut hic
uouere pegrinari et similes actus per iura sta-
tim allata. In contrarium uidetur. Nam de
sensu corporis sui puenit ex naturali instinctu
nec reprobatur a lege diuina nec altera ergo
licet monacho cum quantis ad naturales ac-
tus est ad hoc naturale non sit mortuus sed quo
ad civiles solum ut iuribus §. allatis. Solo
credo quod si monachus sine piculo mortis possit
se defendere et licentia prelati sui petere possit
ipsam petere debet hoc probat iura inducta ad
prima partes. Sin autem si possit licentia pre-
lati petere quia non est periculum et quia periculum
est in mora tunc poterit sine licentia prelati
Moneo ex hoc quod iste actus est iure natura-
li inductus quem prelatum non posset totali-
ter sine causa interdicare immo forte nec pas-
cum nam hoc induxerit nec in his subditi te-
nentur prelati suo. sicut totaliter et sine cau-
sa interdiceret cibum et potum mouet me gl.
que est in ca. non dicatis. xii. q. i. Nam
querit ibi gloria. an liceat monacho elemosinam
facere pauperi fame morienti nisi subleuiet
ei sine licentia prelati et tenet quod sic. Nam hoc
casu necessitatis tenetur. Si ergo uidere
potest alterius uite per actum alias ibi ibi
ibi quanto magis uidere poterit uite sue p-
actum sibi a naturalibus instinctibus si uideo quod
immo dicit asmundus in summa de neg. secundo

lertus. §. sed queritur circa hoc qd si abbas
subleget ipse monachos facere debet quia tunc
ipse non obediens homini sed deo. viii. di. quo
iure. Pondera qd dixit dominus abbas in c.
clerici de vita et honestate clericorum in pe
multima col.

Cap. lxxxvii.

Eximo queritur nunquid suo
licet sic se defendere sine iussu
domini uideretur qd non. Nam
actus seruorum pro nulli habent
ut. l. seruus. C. de rei uen. et. l. uis certis. ff.
de iudi. et. l. si quis mihi bonus. §. iustum. ff. de
acquir. pos. In contrarium uidetur. nam
hodie mores seruorum non est in potestate do
minorum ut. l. i. ff. de his qui sunt sui uel alie.
laris. Confirmatur nam actus naturales
non potest dominus totaliter interdicare
seruo per quorum interdictionem seruus pe
reat ut. l. i. supra pro. al. So. ut supra pro.
dictum est de monacho. Pondera qd be
ne loquitur proamus meus. dicendo qd eade
distinctio hic dari debet que data est supra
in monacho. qd conueniant aduicem secun
dum bar. in. l. cum fundus. §. seruus in si. ff.
si cer. pe. uide Juno. in ca. cum olim de priu.
uide bar. in. l. i. ff. de stip. seruorum et in. l. si
liber homo eode. ti.

Ca. lxxxviii.

Circa queritur nuqd illis quos
licitum est occidere impune ut
pote bannitis. de quibus al. dis
ponunt leges. municipales qd in
pune offendi possunt ut licitum sit se defende
re. uidetur qd non. nam si a priuato iuste infe
ratur uolencia non licet se defendere ut. l.
liii. ff. an. l. acquil. Et hic iuste inferitur. qd
lege autorisante ut. l. iuste. ff. de acquir. pos.
pos. Confirmatur si uolentis inferatur a
publica persona non licet se defendere. ff. de
injur. l. iniuriarum. §. i. ff. de rei uen. l. qui re
stituere xi. q. iii. qui resistit. Et iste hic gerit
uicem publice persone. Nam lex facit ipsum
ministram permittendo priuato ipsum puni
re. Et de hoc potest lex dare iurisdictiones
priuato ut. l. et quis. ff. de iur. o. iudi. et in. c.
i. ne prelati uices suos ubi no. ergo inferat huic
non licere defendere. In contrarium ui
detur qd hic est priuatus ymmo et si foret pu
blica persona apparet iniuste inferri uolencia
cum inferatur iuris ordine non seruat et sic
contra iusticiam ordine attentio. ut. l. prela.
tam. C. de sententiis et. ca. quoniam de po
bat. So. puto ponderandum uerba legis
Nam aliquando lex permittit aliquid quod
nullo iure prohibetur xxi. q. i. hac ratione.
Aliquando lex permittit aliquid contra con
stitutiones humanas ut contrabere matrimo

nium in quarto gradu xxxv. q. iii. quodam.

Tercio modo lex permittit tollerando non
qd facit actum al. illicitum. sed actum illicitum
manente illicitum non punit ut dicit
tex. in. c. de iur. liii. di. Nam comedentes
carnes in nocte dominice carnis punit non
punitur. et dicit tex. permitti. l. non pumi
ri propter multitudinem et scandalum sicut
al. permittit. ad alterum ut uidetur boni
fidem xxiii. q. i. si qd ueneris et tamen ad
alterum non est licitum p. legē sic permittit h
actu manente illicito pena remittitur. Sic
in proposito sit lex permittit tollerando et pena
remittendo actu manente illicito propter odia
banniti tunc credendum bannito licere se dese
dere nec habent articulum concludant super
allata. Sin autem lex permittit poterit fa
ciendo actum de illicito licitum tunc secus
et isti modi permissionis no. per glo. iii. de omni
autem lex. Jo. Pondera quod dixit bar. et
bal. in. l. ut uim de iusti. et iure in. li. col. Et
pondera quia uidetur qd possit se defendere
quia non possunt ei tolli que sunt iuris nullo
sed defensio est iuris nullo de. pastoralis de re
indi. de hoc uide bar. in. l. libertas. ff. de in ius
uocan. que sequitur salgo uide doc. in. c. cas
inter. de except. uide que dixit bar. in. l. de
pupillo in. §. i. ff. de opus no. et bar. in. l. si fide
iussor. §. si necessaria. ff. qui facienda. cogn. ul
de doc. in. c. dilecti except.

Cap. ic.

Circa quintum vs contra quos
competat hoc pticulare bellum
est uidendum circa qd queritur
de pluribus. Et primo queritur
an licitum sit alicui resistere contra impiores
sum et glo. in. l. ut uim. ff. de iusti. et iure dicit
qd non p. l. qui restituere. ff. de rei uen. et. l.
iniuriarum. §. i. ff. de iniuriis pbat tex. in. c.
qui resistit. xi. q. iii. Ego non credo qd gl.
simpliciter dicat uim sed credo distinguendum aut
constat qd iniuste agit Aut constat qd iuste
Aut dubitatur. Primo casu credo resisten
dum ut. l. prohibetur. C. de iure fisci. et. l. deno
tum. C. de meta. li. x. Et hoc maxime cum ali
quid est officium suum agit ad ipsi si spectas
Secundo casu non est resistendum ut. l. qui
restituere. ff. de rei uen. et. l. iniuriarum. §. i.
ff. de inur. Tercio casu non est resistendum
nisi sit tale factum qd non possit post tempus
restaurari nam talia facta pro infectis haberi
non possunt ut. l. in bello. §. facto. ff. de capt.
Nam in talibus. l. inhibens appellari ante diffi
nitiam permittit appellari ut. l. ante sitie te
pus. ff. quorum appe. non reci. In ponde
ra quod dixit bar. in. l. ut uim in. li. col. de
iusticia et iure et ibi bal. uide notata in. l. pro
bitum. C. de iure fisci. li. x. et ibi bar. uide qd
sapienter locutus est Cy. in. l. i. C. unde vi.
uide Junoc. in. c. si quando de off. dele. Junoc

In .c. dilecto de sen exco. li. vi. gl. in .c. et l'is
de offi dele vide nō. in .l. qm̄. C. de appel.

Capitulum lxxx.

Secundo querit' gl. in .d. l. ut uim
quid si index aut potestas aliqd
iniuste agat Respondet Avar.
q non est resistendum p. l. in
riarum. §. l. ff. de iure iuran. Et conuenit
magrātū durante officio si est de minorib'
uel finito officio si est de maioribus ut .ff. de
iur. ii. l. si pars l'iarum .r. l. iii. ff. quod me. ca.
Banc glo. non puto uerum in facto in re
parabili. pone q index in uadat me ut occi
dat .r. est de maioribus. nunquid expectan
dum sit donec finiat' officium uel si est de
minoribus debet expectari donec porrigatur
querela coram prefide absit qz talia facta ut
pos dixi in .l. in bello. §. facit de capte.

Ca. lxxxxi.

Ercio queritur nunquid licitus
sit filio contra patrem. uidetur
q non. propter ius patrie pote
statia. C. de patria potest. per to
tam. Confirmatur nam non licet filio cō
tra se ergo nec contra patrem cum censuan
tur una persona. C. de in pu. .r. al' substi. l. ul.
in fili. de inuisti stipu. §. ci qui. C. de agri. .r.
cen. l. cum scimus in suc. de iure iuran. amo.
pofiti. §. l. In contrarium uidetur. Nam
hec defensio peruenit a iure naturali ut pro
batum est. §. in tercio membro principali nec
aliqua lege reprobatur ut ibi deductus ergo
patria potestatis iure civili inducta aliud ius
filio competens non. tollit cum iura natura
lia civilibus non tollantur in iuri de iure natu
rali gen. .r. ci. §. naturalia. v. di. ius naturale

Solutio dico q si patri aliquid agat con
tra filium corrigendo in his que permittunt'
a iure patrie potestatis non excedendo q si
liceat filio se defendere qz i hoc ius civile q
iduxit patriam potestatem limitat ius natu
rale quod fieri potest ut. §. deductum ē. Ita
autem pater aliquid agat contra filium ex
cedendo sibi concessa ex iure patrie potesta
tis. tunc crederem licitum esse defendere.
Et hec procedunt in filio degente in potesta
te patrie. In emancipato autem minor ē qd
ad inducta in contrariam patet solutio per
iam dicta. Tu pondera quod dixit bar. l. l.
ut uim de iusti. .r. iure. qui uidetur concludere
re quod pater uerberans filium uel dominus
seruum presumitur facere non animo in iurā
di sed animo corrigendi. Et ideo presumitur
uerberatio licita. ideo non est licitum resistere
re xē Sed questio est quando esset in lic
ta .r. inordinata tunc appoibo distinctionem
probaui mei .r. posset allegari illud quod scribi
tur in ar. in .c. esto subiectus xcv. di. si pater

non habet filium in filium . ergo filius cum
non habebit in patrem .

Capitulum xcii.

Quarto quero nunquid monacho
hoc liceat cōtra abbatē uidetur
q non. Nam monachus caret vi
bratione uoluntatis sine licētia
abbatis sui. xii. q. l. nolo .r. c. non dicatis de
statu. monu. cum ad monasterium. Sed iste
actus puenit ex impio uoluntatis qz posset
uelle. Nec hic interuenit licētia plari ymmo
tici facta contradictio que plus opatur q
uolens. ff. de edili edicto. l. si tamen. §. ei qd
ff. de legi. l. de quibus in fili. de appel. c. ad audi
entiam .r. c. ut nostram .r. c. dilecti. Con
firmatur Nam monachus mortuus est iure
xvi. q. l. monachi .r. c. placuit .r. aut. ingressi
C. de sac. in c. eccle. ergo sibi non competit
actus defensionis iure iudicis. In contrariū
apparet. Nam iste actus puenit ex iure nali
nulla lege positum reprobato licet modificato
ergo rō denegatur monacho qui licet sit mor
tuus ciuilitet in iuribus super altatis. Solo
si paelatus contra monachum aliquid attēp
tat de his que permittuntur a iure cōi in cor
rigendo .r. similibus uel ex constitutionibus
ordinis tunc monacho non licet resistere ym
mo nec hoc casu audietur appellare ut de ap
pellat. cum spali .r. c. cum priore. Sin autē
paelatus aliquid attēpēt contra monachū
in his que non pertinent ad officium suum
iure uel constitutionibus modificatum tunc
licet se defendere maxime in his que propter
mortem periculum ingerunt utpote si abbas
monachum inuaderet ut ipsum subito occide
ret quid miri cum etiam monachum liceat
abbatem impetere accusando si aliquid cōtra
debitum agat ut. c. ex pte de accusat. .r. c.
cum olim .c. ti.

Cap. xciii.

Quinto queritur nunquid hoc lice
at seruo contra domini apparet
q non cum potestas sit domini
contra seruum ut. l. l. ff. de his q
sunt sui uel alie iuris. Confirmatur. Nam
seruus tenetur dominum picinantem iurare
et punitur ut. l. si quis in grauē ad fili. ergo
ipsum impugnare non poterit ut .c. vno de
nat is ex lib. ven. .r. c. conquirente de resti.
spoli. ff. si seruus? ven. l. alit' ff. de condi. in
de. l. frater a fratre. xxvi. di. vna tm̄. xxv.
di. c. ultra. xvi. q. i. siluester. ff. de fideiuf. l.
tutor. ff. de admi. ru. l. quotiens. In conf
rium apparet. Nam hodie restricta est po
testas dominorum in fno. l. l. ff. de his q sunt
sui uel alie iur. Nam hodie non habent potes
tatem trucidandi nec scriber eo s affligē di
ergo. Solutio ut dictum est de monacho

si minus aliquid attemptet contra seruos
bilioz iura permittunt non licet seruo se de
fendere. Nam in hoc limitantur actus a iure
naturali poenitentes a iure positio limites
te potestatem duorum in seruos. Sinu
tem attemptet aliquid ultra q̄ a iure positi
um est. tunc secus q̄ in his licet serui nō sint
cogniti quo ad naturales qualis est iste. et
hec solamur consimiles questiones. Nā
quid ualido contra dominum. nūquid disci
pulo contra magistrum. nūquid militi con
tra propositum. nūquid uxori contra mari
tum uniuersales solutiones soluntur ut si attēp
tetur quod inpermittit non lice se defende
re. Sin autem ultra et contra iuris debitas
tunc secus ut supra plene tactum est. Ex
his breuiter inferitur contra quos ex regula
supra dicta possent q̄ones infirmitate solui.

Capitulum xxiij.

Ita lex tunc est uidendum ut p
qbus liceat. Et primo circa p
sonas pro quibz sit licitū et pone
in dubitatum pro defensione sui sp
sio hoc probat tex. in l. ut uiui. ff. de iusti.
et iure. Et l. i. §. nūm ut de ui et ar. et l. iiii.
ff. ad l. Aquil. et l. i. scientiam. §. qui cum al. r.
eo. et clare in cl. i. de homic. de aliis quero.

Ita pondera hic que dixit pro meo
et hic seq. capit. scilicet de marito erga uxore
de fratre et aliis conuictis et. nam bartho.
tangit in l. ut nūm. ff. de iusti. et iure in l. iiii.
col. ibi bal. uide dominum abbatem in ca. oli
de resti et spoli. xli. col. uide glo. xlii. q. vii.
in summa. Et uide Juno. in ca. si uero i sen
tencia excommuni. uide ibi dominum abbates
aliquid per dominum abbatem in capitu. de
rica de uita et honestate clericorum ne tibi
sit molestum. uide oio bar. in l. tutor. §. si tu
tor inimicus. ff. de suspic. tuto et allata. per
eum ibi. uide bartho. in l. i. lex cornelia. ff. de
iniuriis uide bal. in l. raptos in. ii. col. C.
de epl. et cleri. uide dominum in capitulo di
lecto de sententia excommuni. libro sexto in iiii.
col. Clide cy. bal. et fali. in l. i. C. unde ui. u.
de ange. l. §. iur. precepta de iusti. et iure bar
in l. si quis in seruitute. ff. de furtis et.

Capitulum xcv.

Primo quero An liceat patri
pro filio expediendo parit dubia
sine argumentis dicendum q̄ sic
Nam pater filium ut seipsum dili
git ut l. isti quidem. ff. q̄ me. ca. Nam ppter
hic ppetatur in eum. ff. de v. signi. libelloni
ia si etiam quia una persona cenetur. C. de
imp. et aliis iusti. l. si. in aut. de iure iuram.
amo. prefi. in prin. iustit. de inutili stip. §. ei
quem hoc clarum idē contra. C. ut filius p pre

Cap. xcvi.

Secundo queritur Nunquid hoc
liceat marito pro uxore clarus est
q̄ sic. Nam iniuria uxoris seu
uxori irrogata est illata marito
et iniuriarum actio sibi competit ymmo et spōlo
ut l. item apud. §. sponsam. ff. de iniuriis et
marito licitum est occidere uirum reperiunt
adulterantem cum uxore. l. marito et l. capi
te quinto. ff. de adul. et l. i. graccus. C. e. ti.
ymmo et fabulentem monitus pro iura nūc nec
incidit in canonem si quis suadente. xvi. q.
lii. ob hoc mittens manus uolentas in clericū
ut. c. si uero. §. nec ille de sen. excoicat.

Capitulum xcviij.

N liceat pro fratre et aliis conuic
tis putat. ut pro uxore et aliis per
sonis non conuictis et glo. in l.
ut nūm. ff. de iusti. et iure dicit
ponderandam affectionem allegat. l. isti
quidem. ff. q̄ me. ca. et l. i. et l. cum seruo. ff.
mandati. Alii uolunt dicere q̄ pro omnibz
conuictis licet q̄ pbat sic. Nam si quis
iniuriatur uti conuicto omnibus iniuriari
uidetur licet non competat aliis iniuriarum
actio ut l. lex cornelia in prin. ff. de iniuriis

Confirmatur nam pro defensione rerum licet
nim ut repellere. l. i. §. unde ut et l. iiii. §. cum
igitur. ff. de ui et arma. et licitū est nolēti
uim ut repellere pro defensione rerum amicos et
conuictos conuicere ergo licitū est ami
cis et conuictis innare. Et sic concludunt
pro non conuicto indistincte hoc licere.

Hec opinio confirmari uidetur. Nam ho
mo homini officium debet. ut l. cum seruo.
ff. de de seruis exposit. ergo ex illo officio iura
re licet. Confirmatur per l. aditos. C. de
appella. melius per l. non tū. ff. de appella. et
am extraneus pro condemnato in crimina
li appellat etiam ipso nolente. probatur per l.
i. C. de libe. ca. Dominus Ja. bat. in. ut
nim distinguit hunc modum. Aut ego ut ego
sine mandato iniuriati uolo defendere iniuri
atum per uiam iuris et possum non autem fa
cti et sic intelligitur leges statū allegare ad
tos si tū et l. iiii. C. de libe. ca. at uo'o hoc fa
cere non ut ego sed mādante iniuriato et tūc
possum etiam per uiam facti ut l. iiii. §. cūz legi
ff. de ui et arma. Alii distinguunt aut illi
erant in conuictam iniuriam passi et possent
tunc ppuellare iniuriam plone eius illicitas et
eius quod nō. l. item apud labeonem. §. si ge
uiginem. ff. de iniuriis et non ut tenet glo.
indistincte in l. i. C. unde ut ibi Cyn' hanc
opinionem recitat in autepensitima q̄stione.
Alii ut Ja. de ra. dicunt indistincte q̄ licet.
Et ratio Nam negocia mea possunt iniuriari
et aliam ut l. i. ff. de neg. gest. Multo fortius
et plona iniuriari poterit cū plone rebus p̄senti

ut. l. scimus. C. de sacrosanc. eccle. allat pro
casu. l. græcus. C. de adult. Si dicas ibi fuit
filius soluit per. l. liber homo. ff. ad. l. acquit.

Non obstat. l. cū fundus. ff. de ul. 1. ui ar.
Nam ibi ex intervallo voluit q non licet
etiam per se. Non obstat fm cas. l. ut vim
ff. de iusti. 1. iure ubi dicit ob tutelam sui cor
poris Rildet p. l. si fums. ff. de seruis expor.
Hanc opinionem videtur sequi Cy. in. l. l. C.
vnde vi in qde ante penltima. In his tot
1 tantorum crederem ponderandum qd mlt
tim formam qdem de coniunctis 1 cñels q
queri potest. An liceat coniuncto vel cñeo
alterius violentiam ui repellere licet liceret
ppriam quoad euitandā penā irregularitatis
l. sic cñens vel laycus hoc casu occidens vel
mutilans. potest etiam queri de utriusq an
licitum sit ut non incidant aliam pecuniam
legis vel canonis. Sed queramus de pio
dico casum in clem. si furiosus de homici. lo
lum euitat penam irregularitatis. si hoc faci
at seipsum tantummodo defendendo non au
tem alium etiam patrem vel filium hoc pro
bat tex. dicens. Idem censemus de illo q mo
tem aliter non uolens euadere suam interfe
cit vel mutilans in ualorem loquitur de suo
non autem de iniuria alterius. hoc ibi etiam
nota glo. super uerbo suum. Et hoc casu re
puto plannum. Si autem queramus an li
ceat ut uideatur alii pene legales uel cano
ce 1 tunc distingue aut loquitur de pena ex
communicationis. Si hoc casu percussat cleri
cum alterius violentiam ui repellendo. tunc
dico cum Jmo. q si defendat patrem mrem
uxorem filium vel filiam quod penam exco
municationis allegat ipse. l. isti qdem. ff. quod
me. ca. 1. lege. l. 6. si uir. ff. ad fil. Et est
rō differentie inter hunc casum 1 pcedere
Nam irregulariter contrahitur etiaz sine do
lo ut est uidere in indice iuste occidi mādare
l. Si qui in aliquo sed in excoicātōe in illaz
cas. lata requiritur diabolica instigatio ut. c.
si quis suadente xvii. q. iiii. In extraneis
autem non quod penam illius canonis etiaz
si miles mandato iniurari hoc fecisset. Aut
loquimur de alia pena psonali uel pecuniaria
1 tunc distingue. Aut uolentes vim repellere
a violentiā passio sunt coniuncti aut extranei
in coniunctis dic ut in glo. in. l. ut uim 1 iusti.
1 iura etiam limitando p. l. in priuatis. ff. de
iudi. 1. lex cor. ff. de iniuriis in poin. Aut
loquimur de cñels 1 tunc aut illi extranei e
rant deputati p comitibus violentiam passi. 1
tunc licet ut. l. Item apud laborem. 6. si
quis uigilum. ff. de iniuriis. Aut non erant 1
poteti p comitibus 1 tunc aut uoluerunt ex
intervallo repellere 1 nō pōt ut. l. cū fundus
ff. de vi 1 vi arma qd nec ipse sic proprias re
pellere possit 1 hoc defensa facti. Defensum
autem iuris etiam possent ex intervallo face
re ubi iura hoc permittit ut. l. nō tū de apel
1. l. i 1 lib. ca. 1. l. aditos. C. de appel. 1 p hoc

non puto uerum opl. domini. iacob. butri. qui
dicit q indistincte defensi iuris facere pōt.
Casus in quibus tertio non licet occidem seu
accusationem pponere pro iniuriarum passo
tolle exemplum regulariter in priuatis delictis.
Sic ergo solaz ubi iura pmittunt. Sin
autem uoluit incōtēti repellere tunc distig
uerant cum domino Jaco. aut uocatur per
uolentiam passum 1 tunc licet. Nam licet
uolentiam passo aduocare amicos p dēnsa
rerum ut. l. iii. 6. cum igitur. ff. de ul. 1. ui ar.
ergo p defensa psona que pponderat ut. l. lā
chmus. C. de sac. sanc. eccle. aut non aduo
cantur 1 tunc licet. tex. est in. c. dilecto de
sen. exco. li. vi. p hoc facit. xxi. q. iiii. non
inferenda 1. c. iustitudo de senten. excoic.
quante facit nō. in. l. l. C. de conuer. 1 mer
ca. Et sic in hoc credo vñ opinionē opl. Ja.
de ra. tex. est in. c. dilecto. Nā dicit ibi tex.
Nam cum liceat cuilibet suo uicino uel pio
p repellenda ipsius iniuria sui ipeiri auxilii

Capitulum xcviii.

Quarto queritur quis uidit quem
occidi nō tunc ipsum an teneatur
ipsius iurare. uidetur sic per
l. necare. ff. de libe. agno. Cō
firmatur hoc ex officio quod debet homo ho
mini ut. l. si seruus. ff. de seruis expor.
Hoc cōfirmatur. Nam error cui si restituitur
approbari uidet lxxviii. di. error 1 ca. cōsen
tire 1 ca. quod enim In contrariam uide
tur. Nam licitum est alicui preclum recipere
ut metum illati alteri excusat. ff. quod me.
ca. l. metum. 6. sed licet. Confirmatur nāz
in casibus quibusdam hoc est ipse q quis te
neatur alium sic iurare ut. ff. ad fil. l. 6. hoc
autem 1. l. si. C. eo. ti. ergo contrarium p co
mune. ff. admini. l. l. 1. l. ius in figurare. ff. de
legibus glo. tenet q iurare tenetur uerbo si
facto. regula non culpa. de regulis iuria. Nec
obstat q debet homo homini q debet sine pe
riculo sui ut. l. habet. ff. de ope. liberto. 1. l.
nepos procuro. ff. de uerbo. signi. In pon
dera ea que sapienter loquutus est bar. in re
ga. culpa de reg. iuris 1 bar. in. l. l. 6. sed si l
ff. ad filio. ange. in. 6. iur. pcepta. ff. de in
sti. 1 iure. uide ca. quante de sen. exco. do
cto. l. ca. l. de offi. dele. in ti col. in simili uide
glo. in si. lxxvi. di. uide ca. negligere li. q.
vii. cum glo. cum ca. seq. uide p. ancho. in. c.
i. de. confel. li. vi. bar. in. l. ut uim in penult.
col. de iusti. 1 iure.

Capitulum xcvi.

Quinto queritur de his qui tenent
tur aliis violentiam pro pulsare.
1 circa hoc querit de pluribus.
Et primo de ualido 1 non ē du
blum q tenetur iurare dominum nō. perdit

secundum ut in uisibus feudorum que sunt prima
causa am. seu. ca. prima autem cā §. item q
dominum 7. §. lq.

Capitulum c.

Secundo queritur de seruo. Et q
tenetur iurare dominus ē tex.
in l. prima. §. hoc autem. ff. ad
ill. C. eo. l. ultima.

Capitulum c. i

Terzio queritur de milite 7 q
tenetur iurare prepositū belli si po
test alios capite punire. est tex.
in l. omne delictus. ff. de re mi.
7 l. iii. §. si eo. ti. ff.

Capitulum c. ii.

Quarto queritur uasallus uidet do
minum inualum ex parte una. 7
patrem ex alia uterq; pariter est
in mortis periculo nisi iuuetur.
nec iurare potest. nisi alterum quem iuabit
patrem an dominum glo. que est xxiii. q. v.
de forma dicit q uasallus tenetur iurare do
minum contra filium proprium inducit qz si
lius tenetur patri iure nature. Sed uasallus
domino uinculo iuramenti ut in uis. seu que
fuit prima causa bene amir. capitulo quinto.
no. Et secundum hoc foret decile questio
qz teneretur iurare dominum cui plus atri
gitur. In hac questione dicerem contra
rium et moueo ex hoc. Nam filius tenetur
patri ex uinculo naturali ex quo ab eo proge
nitus tenetur 7 uinculo civili qz sub eius po
testate patria. Uasallus autem domino tene
tur uinculo civili tantum ut p predicto capita
lo de forma xxiii. questione quinta. Sz duo
uincula uincant unum in auc. de consagu. 7
uteri fratribus in pncipio ergo confirmatur
ratione pxiocitatis obligationis. Nam prius
est uinculum paternum uinculo dominico.
ergo primo ipsum iurare tenetur ut. l. potior
7 l. qui balneum. ff. qui. po. in pi. ba. Confir
matur iuramenti prestitū uasallo. intelligitur
saluo uinculo pcedenti nā ius alteri ques
tum nō tollitur per secundam obligationē ut
dicta. l. q balnei 7 l. potior. Confirmatur per
ca. peticio de iure iuran. nā iurādo dño d ipz
iurādo nō intelligitur iurasse. Sic quominus
seipsum iuret q dominum qz hoc pia caritas.
ut. l. peca. C. de serui. Sed pater ē eadē p
sona cū filio iurisdictione ut. l. ultima cū con
corden. C. de impu. 7 al subti. ergo.

Capitulum c. iii.

Quinto queritur pone clericus epus
sui uidet in uasallum ex una parte
patre ex alia uterq; pariter ē in

mortis periculo nisi iuuet nec iuuet poterit ni
si alterū quē iuabit epi. an pa. car. hosti. l. c.
grauem de excels. pcela. arguit uterq; 7 put
ibi ponitur plus astringuntur patribus spiali
bus q carnalibus p hac facit. c. ii. de trāsa.

Si illa opi. est uia soluta est questio. Sed
tamen in hac questione credo ut. §. prima. q
Induco capitulum si de postea. Nam ibi
dicitur tex. q si postulerit contra ecclesiam
7 non pro suis perdit beneficium ergo acon
trariis p suis posset. Induco. c. peticio de
iure iuran. Inducendo ut. §. prima questione
induxi. Et faciant motiua. §. prima questione
inducta 7 glo. in casu pietatum. xxx. questione
iii. super vbo multo magis tenet q in exhibi
tione temporalium magis tenentur patri car
nali quam spirituali. In exhibitione autē
reuerentie e contra. Idem nō glo. xxx. d. c. i
faciant que nō. l. xxvi. di. ne satis 7 capitū
lo quiescamus xlii. di.

Capitulum c. iiii.

Uia uisum est supra hoc membro
An 7 p qb' plos liceat hoc bel
lum indicare. Nunc autem suble
quenter queritur an 7 pro rebz
defendendis licitum etiam sit hoc bellum indi
cere. Et circa hoc queritur de pluribus. Et
primo p rebz iuste possessis. Et de his non
est dubium tex. ē in l. i. C. unde ui pbat in l.
iii. §. si quis autem v. cum igitur al est. ff. de
ui 7 ui arma. 7 c. olim de restitu. spoli. Tu
pondera q dixit bar. in l. ut uim de iusti. 7
iure in. iii. col. uide. d. abb. in. c. significasti.
c. l. ii. de homici. in prin. 7 ibidem in quarto
col. in si. uide bar. in l. iii. §. cum igit. ff. de ui
7 ui arma. uide. d. abb. in. c. olim de resti. spo
li in. ii. col. 7 in. xi. col. 7 c. 7 in l. iii. ff. ad l.
aquilam uide. d. abb. in. c. suscepimus de ho
mici. 7 d. abb. in. c. i. de nita 7 bo. clericorū
in. ii. col. bar. in l. i. in. ii. col. C. unde ui.

Cap. cv.

Secundo queritur An p rebz in
iuste possessis hoc liceat glo. in l.
i. C. unde ui hoc tractat 7 uidet
q non a pterio sensu illius tex.
q est solidum argumentum. l. i. §. huius rei
de off. eius 7 c. neq; de conuersi. coningio 7
c. hospicioium xxi. disti. In contrarium
uidet p tex. li. i. §. qui ui. ff. de ui 7 ui arma.
7 l. cum fundam. c. ti. 7 l. si cum exceptione
§. pedius. ff. q m. ca. Solo p hac legi appa
renti contrarietate glo. in dicta. l. i. dat pla
res soloes. Prius q ibi subaudit maxime 7
tunc cessat contrarium quia etiam pro uiciosa
possessione licet. Secundo q iungatur princi
pium. l. cum si. ut dicat rōe licet. Sed tunc
obstat q dicit lex in medio line uicio. Tertio
q iuste possideri semper licet Sed uiciose

possidenti non licet semper. Nam si dominus incontinenti ueniat non licet uicioso possessore sibi resistere ut. l. iii. §. cum igitur. ff. de ui et arma. Quarto exponendo ratione. l. non ui nō clam nō precario. et hoc nō placet glo. Sed in de ra. sequitur etiam quantum ad eum qui uult propellere ut si uolentia inferatur ab eo a quo uicioso possidet. licet in continenti nō autem ex intervallo. Si aut ab alio uiciose possideat tunc quandoque liceat et hoc est quod dicit tex. q. aduersus extraneos uiciosa possessio probet. ff. si serui uen. l. lo ci corpora. §. competit. hic uidetur sentire in eo. clamdestinum possessorem licitus sit mihi appellare si a me clam possideat q. clamdestina possessio est uiciosa ut. ff. de acquiren. poss. l. cum quis. Pro hac opi. facit. l. si se rursus ff. et cum eo. hunc opi. uidetur sentire glossa. ff. uti poss. l. i. §. inter dictus. In medio magne igitur nec tamen uolo. Dy ibi tenetur contrariam. cuius lege hoc reperiatur tantum q. clamdestinum possessorem liceat mihi expellere. Primo dicit lex uim ui repellere liceat Sed qui clam ingreditur nō infert uim cum differant clamdestinas clamdestina et uolenta ut. l. clam possidere. §. ad iudicis ff. de acquiren. poss. In precario autem possessore procederet et procedere posset opinio. ia. post denegatam restitutionem. Nam tunc enim uidetur spoliare dominum ut no. in. l. uiccia. C. de acquiren. poss. In hac opi. uarie tate crederem secundum lo. glo. fore ueram. quam etiam sequitur pe. de bella pica in dca. l. i. cum tamen sic amplianda. Aut ergo uolēs uim propellere iuste possideo aut iniuste. Si iuste. Aut uolo in continenti et cum modamine inculpate tutele et possum ut dicta. l. i. §. uim ui. ff. de ui et arma. Aut ex intervallo et tunc non possum ut in. §. si quis autem. et igitur de ui et arma. Secundo scilicet iniuste possideo. Aut possideo iniuste a te contra quem uolo uim propellere. aut ab alio si a te. tunc aut ui aut precario aut clam. si ui tunc aut statim uenio ut recuperes et non licet mihi resistere et sic intelligatur. l. prima a contrario sensu. Unde ui et arma lege prima. Et iste est uis et rectus intellectus illius si bene pōderet una cū allegatis in contrariis Sin autem uenias ex intervallo non licet recuperare nocturnitate propria ymmo incidere in penam. l. si quis in tantum. C. unde ui. Et intellige ex intervallo ut no. glo. ff. de ui et arma. l. iii. §. cum igitur. Sin autem nō possideo ui sed precario tunc post denegatam restitutionem licitum est tibi in continenti uim ui repellere nec licet mihi resistere. Nam negando ui deos spoliare ut. l. uiccia. C. de acqre. p. et tunc procedit q. uim ui repellere liceat ante autem denegatam non procederet. licet posset renouare precarium ut. l. cum precarium ff. de precaria. Sin autem possideo clamdestine a te. et tunc quicquid dicat

glo. in. l. i. C. unde ui. Credo tamen dyno. q. non sit licitum ei tibi me repellere sed licet tibi ingredi. et si te nō admiseris et tunc sit uolentia ut. l. clam. §. qui ad nandina. ff. de acquirere. poss. et tunc procederet q. uim ui repellere licet. Sin autem non possideo uiciose a te sed a tercio. tunc licet mihi contra te quodocumque uolentiam mihi uolentiam inferre uim ui repellere ut. l. salcinus. §. q. si aduersus. ff. ex qui. ca. in poss. ea. Hoc dixi saluo iudicio et tot et tantorum super hoc dubio disputantium subiciendo dicto quodocumque correctionibus ueritatem inquirentibus. In pondera ea que predicat bar. in. l. i. C. unde ui et alii doc. ibi nituntur aliquid exprimere.

Capitulum cxi.

tertio queritur uim ui repellere circa res suas. Si cōtingat uim repellentem occidere uel mutilare uim inferentem euitet penam irregularitatis. Et primo ubi hoc faciat cum modamine inculpate tutele q. questio pcedat al non pcederet questio. Et uidetur q. euitet. Nam p. defensa persone euitat et penam illam et alios et in clem. si furiosus de homi. ergo pro defensa rerum probatur pcedat in Nam iura pmittentia uim ui repellere parificat personam rebus quia utroque casu licet ut. l. i. C. unde ui et arma. l. i. §. uim ui. ff. de ui et arma. et arma. l. i. §. q. cū al. ff. ad leg. In p. rui facit dca. clem. si furiosus de homici. Nam ibi textus stricte loquitur de occasione uel mutilatione occisoris sui. Et hanc credo ueram et moneo ex hoc. nam irregularitatem contrahit quis occidendo uel mutilando nisi dolo ut patet in indice li. di. de homici. sicut dignum de homici. et ca. sententiam ne de. l. mo. et ca. in archiepiscopatu de rap. Qui ergo occidens qualitercumque irregularis efficitur nisi in casibus exceptis a iure cui igitur excipitur casus defenle intelligere debemus illum casum stricte et modificate ut ius excipitur ut sit ius ex orbicano. Et sic stricte intelligendum ut regula que a iure de regulis iuris li. vi. Pondera ea que dixit do. abba. in ca. olim de resti. spoli. in xi. col. in fi.

Capitulum cxii.

Quarto queritur an p. rebus solo uim ui repellendo contra clericum incidat in excommunicacionem manus iniciende apparz q. sic per can. si quis suadente xvi. q. iiii. et ca. super. cum ibi no. de senten. excomunica.

Confirmatur nam incidit penam irregularitatis ut supra proxima questione. ergo et hanc cum ambe sint pene spirituales et facilius quis incidat excommunicacionem q. irregularitatem ut claret Eo. Juno. in ca. olij

de resti. spo. tenet q non incidat excomuni-
cationem uim ui repellendo si al manus non
iniciendo. Nam possit uim ui repellere 7 hoc
facit cum moderamine inculpate tutele. hic
opinionem credo ueram 7 moueo qz ut qd
incidat in excommunicationem per manus in-
iectionem in clericum uolentem debet sub-
esse diabolica inspiratio probat tex. in fuden-
te diabolo 7 vii. q. iii. Et si bene discurras
per iura infingentia penam excommunicationis
propter manus in iectam nō inuenies q ma-
nus in iecta in clericū hoc casu aliq d mab?
de qb? iura exprimit sic puniendo. nā iura pu-
niant manus uolentem ut dicto. c. si qd sua-
dente. xvi. q. iii. 7 defen. exco. per totū hoc
non est talis ymmo est uolentie repulsoria pu-
nient temerariam ut in. c. contingit d sen.
exco. hic non est talis ymmo districta lege
permittente puniant quasi uolentem manus
ut. c. nup. c. ti. hoc est uera manus 7 pūna
pūnant uocem. ut. c. uniuersitatis 7 cā mon-
dantur pūti 7. c. quis. e. ti. li. vi. puniunt a-
nimam ut. dicto. c. cum quis ut cum ratum
habet suo nomine factum puniunt neglectus
ut ca. quante eodē titulo. hic nūll de predic-
tis. Ad allegata in contrarium facile ē re-
spondere ad capitulum si quis suadente est re-
sponsam per supra dicta ad id. quod dī de ir-
regularitate clara est ratio differentie. Nā
excommunicationem nemo incidit sine dolo ir-
regularitatem sic de quo dicit ut no. glo. i. de
men. si furiosus septus allegata in penultima
glo. Pondera q dixit abb. in ca. si uero d
senten. excomuni. in fl. Uide plene per totū
nam abbat ca. olim de resti. spoli. i. xii. col.

Capitulum c viii.

Quinto queritur an licitum sit p
repellere uolentem circa res ad
nocere amicos 7 eis licitum sit
subsidiū impendere glo. in. l. iii
§. cam igitur. si. de ui 7 ui arma. notat q sic
etiam illicita uolentia in rebus 7 hanc credo
ueram 7 moueo nam ut dicunt iura licitum
est obuiare errori ubi obuiare potest al nō ob-
uians pferire uidetur lxxiii. di. error. 7. c
qui sentit cam si. ergo licitum amicis i hoc
nocere proximū sui ut. d. dictū est quia hoc
prouenit ex radice caritatis ut ca. primos
de pe. di. ii. Et si hoc licitum ē statim soluitur
qō qz qd possit incidat in exco. manu iniciēs
in clericū sic uolentia pro pellendo pro reb?
proximi qui non incidit cum nō sit aliquis
de pūtiis a canone ymmo ē permissa.

Capitulum c viii.

Exto queritur An pro rebus sit
licitum contra omnes uim ui re-
pellere ptra quos licitum est pro
personis. Solutio q sic in perso-

nis que ualēt habere bona ut excludam facio
monachos. i. similes facio tamen q modera-
mine tutele diuersitatem debet attendi maria
plene qualitate. Nam al. 7. mīno ptra ptra
q penitus exneum 7 sic de singulis que pū-
deanda ueniāt inspectis singulis circumstan-
tiis cum non sint hoc iure limitata ut. l. i. ad
fl. ff. d. iure delibe 7. c. d. causis d offi. delega.

Capitulum c xi.

Septimo queritur An pro rebus
depositis 7 comodatis sit licitū
uim ui repellere 7 uidetur q nō
p. l. i. c. unde ui qui loquitur de
possessis 7 iuste ac hec non possidentur p de-
positarium uel comodarium ergo non licet
in his uim ui repellere. Solo in his 7 si libus
mendicat sibi locum q licet uim ui repellere
Nam p talibus iudicium ui bono. raptorū ppe-
cit depositario uel comoduario si hec sint
rapta ut. l. pector. ait Quid est tertia lex. §.
in hac actione. ff. ui bo. raptorū ergo multo
magis ipsis conceditur tutele ut. l. i. i. i. §.
cui dam? ff. de reg. iuris 7. l. i. una. ff. de fonte
7 regula quid ad agendum de reg. iur. li. vi.
Etiam quia isti tenentur ergo non obstat. l.
i. c. unde ui quia licet loquatur in possessione
non tollitur tamen quo minus in aliis tuten-
tatis p quibus iura tudentibus actiones
pcedant ut. d. Uel dic q vbum possidere
sanitur large ut implicet iustas tudentiōē
ut. l. officii d rei uen. 7 no. in ca. pastoralis d
cā poss. 7 proprieta.

Capitulum c xi.

Ita septimum principali queri-
tum uidelicet qualiter uim ui re-
pellere tamen cum moderamine
inculpate tutele 7 huic respōdy
tex. in. l. i. c. unde ui q licet cum modera-
mine inculpate tutele 7 huic rīdet tex. in. l.
i. c. unde ui q licet moderamine inculpate
tutele sed reuocatur in dubium quid uelint
hec vba hoc est que sint illa que requirūt ad
hoc moderamen doc. cōmūter dicit q sunt
illa que equiualent illate uolentie in qualita-
te armorum 7 concursu temporis. Item eg-
ualent in ipso actu uolento ne aliis exten-
denda censeatur uindicta.

Capitulum c xii.

Ed circa hec dubitatur an licet
vili 7 debili cum cū se defende-
re contra fortem 7 robustum pu-
to tātūmodo patientem. uidet
q sic quia equalitas ubiq est ponderanda ut
l. i. c. de fruc. 7 lit. expen. 7. l. i. si cā dīca. ff.
de arbi. 7 regula in iudiciis li. vi. In contra-
rium uidetur. Nā si quis uolenter mult mibi

subripe et ego uiribus corporis imper ipsum
percussio cum ense non impune licet. Nam
fieret compensatio corporis ad rem quod esse non
debet ut. l. ultima. C. de sac. sanc. eccle. Ja.
de are. distinguit aut quis uult populare uolē
tiam illatam persone aut illatas res? Primo
casu licet et cum armis et qualitercumque si res
aliter reparari non potest ut. l. si quos. C. de
appell. Nam si possum occidere furem ubi
non cognosco quod possit mihi in rebus furatis
per iudicem prouideri ut. l. fure. ff. ad. l. cor.
de sicca. Multo magis licet occidere ubi per
solum aliter salua esse non possit. Secundo ca
su quando illata est resbus tunc aut uolentia
rebus illata potest per uiam iudicii reparari
tunc non licet quicquam; immo cum quali
tate armorum non autem factorum quia non
debeo personam percutere pro uolentia facta
in re pro defensione rei ubi etiam aliter salua
esse non posset dimodo pro uiam iudicii reparari
possit. Sin autem per iudicem non potest re
parari tunc licet qualitercumque defendere etiam
eam personam occidere ut. l. fure. ff. ad. l. cor.
de sicca. Et sic intelligitur. l. una. C. unde ui
et. l. iii. §. cum igitur. ff. de ui et arma. Sic
igitur intellige moderamine inculpate tutele ex
qualitate armorum et factorum.

Capitulum cxiii.

Secundo queritur Circa primum
temporis quia dicunt tex. quod de
fieri incontinenti. Quæro quando
intelligatur incontinenti. Solum
aliqui dicunt si ante fiat illata iniuria tunc de
bet iudicem adire. Alii dicunt in continen
ti fieri etiam si fiat post antequam diuerterat
ad extraneos actus ut. l. quod ait in si. ff. de ad
ultra. Ja. et per. distinguit Aut loquimur de
uolentia illata persone et tunc dicitur re
pellere in continenti si fiat in ipsa fragrantia fac
ti sic intelligitur. l. i. claus. §. quod cum aliter. ff. ad. l. acq
et. l. ut ut. ff. de iusti. et ui. aut loquimur de uolē
tia illata rebus et tunc dicitur incontinenti
repellere etiam post fragrantiam facti dum non
diuerterat ad extraneos actus. ff. de ui et arma
l. qui possessionem et. l. iii. §. cum igitur. et. ti.
Ratio diuersitatis est. Nam illata iniuria pro
sone non potest amplius restitui sed res ab
illata recuperari potest et sic non facta diuisi
one ad actus extraneos etiam si amicos que
rat et redeat ut recuperet dicitur incontinenti
ut no. glo. in dicta. l. iii. §. cum igitur de ui et
arma. Sic intellige moderamen in concurſu
temporis.

Capitulum cxiiii.

Etiam queritur de moderamine
in equalencia in actu uolento
uolentia quod fieri debet ad defen
sionem non autem ad uindictam

licet uarie scribatur totum hoc ponderari de
bet in spectis conditionibus personarum an
uindicasse uidetur non defendisse.

Capitulum cxv.

Quarto queritur quis expulit me
de possessione et post expulsionem
petitus est satildare de restituenda
si appareat ipsi iniuste fecisse sed
nihilominus ipsum expello nunquid uidetur se
cisse ad uindictam glo. tenet quod sic in. l. i. C.
unde vi. Sed contra glo. reprobat. Nam
non debuit se committere illi fragili cautione
ff. ad trebel. l. quia poterat et. l. na quod cum sy.

Capitulum cxvi.

Quinto queritur. Nunquid si ui
deo aliquem paratum ad percussio
nem me. An debeam expectare
quod me percutiat an debeam puen
ire. glo. in dicta. l. i. arguit pro et contra et ob
terminat quod non debeam expectare. De. dicit
glo. intelligendam habita distinctione perso
narum. Nam aliqui sunt audaces et prompti
ad percussendum et tales non sunt expectandi.
Aliqui timidi et tales non sunt statim puen
iendi et sic modificat glo. in. l. i. C. Si quis
impro. maledixerit.

Capitulum cxvii.

Sexto queritur quidam egregi
miles est aggressus a vicino suo
et euadere posset fugiendo. tamē
reputans sibi ad uituperium ex
pectat et resistit et percutit nunquid censetur
nimis ui repellere apparet quod non per. l. sci
entiam. §. qui cum aliter. Moderni doct.
tenent contrarium per. Leadem. ff. ex quib.
ca. ma. Nec obstat. §. qui cum aliter quod non po
terat euadere sine periculo fame sue et bono
ris sui que non possunt per iudicem reparari.
ut. l. iul. ff. si quis omni. causa. testi.

Capitulum cxviii.

Septimo queritur Quidam uul
neratus post uulnera insequitur
uulnerantem et ipsum percutit
quod non licet ut. l. si ex plagia.
§. i. et. l. qua actione. §. in collatione. ff.
ad. l. aquil. nunquid percutitur ut uolens aut
culpabilis. Quidam dicunt quod ut culpabilis
quod in conspectu color uicio calumpnie caret
ff. ad tur. l. i. §. queri. ff. ad. l. cor. de sicca. l.
iii. §. cum quidam. ff. de penis. l. respiciendi
§. de linquant. Alii dicunt quod ut. uolens cum
se uindicare animo debuerit. Ja. de are. di
cit primam opinionem biamorem. ff. de penis
l. interpretationem. ff. de reg. iur. l. in totum

secundum rigiditatem. C. de iniuriis. l. si non est
uicti. Credo primum uictorem etiam de iure
per iura prius allegata.

Capitulum c. xviii.

Cenno queritur nunquid uiolem-
tia illata persone possit per ami-
cos propulsi sicut illata rebus
ut no. glo. in. §. cum igitur glo.
in. l. l. C. unde ut dicitur non per. l. cum fun-
dum. ff. de ui. et ar. Alii distinguunt aut
amici erant in comitiis uolentiam passi aut
non. primo casu licet per. l. Item per labeo-
nem. §. si quis uirginem. ff. de iniuriis. Se-
cundo casu non licet. Ita de are. tenet indi-
stincte quod sic si negotia nostra possint per alios
lumiari ut. l. l. C. de neg. gest. Multo magis per
sona que rebus praefertur ut. l. sancimus in fi.
C. de sacro sanc. ecc. probare uidetur tex. in
l. graecus. C. ad. l. l. adul. Non obstat. l.
cum fundum quia ibi mandabatur ex iural
lo quod non liceret in principali. Duic opi.
obstat. l. ut uim ubi dicit quod obtulit sui cor-
poris et de. si furiosus de homici. Unde
ra tex. in dicta. l. item apud labeonem. §. te-
nere sancta glo. de iniuriis unde bal. in. l. ut
uim. ff. de iusti. et iure. unde textus cum glo.
in. c. dilecto de sen. excomuni. li. vi. de quo
textu facit festus baldus in ti. de pace tenenda.

Capitulum c. xx.

Uno queritur pone quidam ma-
dauit seruienti suo quod uxorem in-
am quam habebat suspectam de
adulterio occiderit uel ipsam oc-
cidit. Seruiens interfectus. nunquid excu-
satur uidetur quod non. nam potius debet omnia
mala pati quam mala consentire ut. l. isti quod in
fi. ff. quod me. causa uidetur textum in lege
scientiam. §. qui cum aliter. ff. ad. l. agl. In
contrariam facit. l. ut uim. ff. de iusti. et iure
Nam hoc fecit ad tutelam sui corporis ergo.
Iaco. de ra. distinguit aut mulier erat alio pi-
tura aut non ut. l. si quis seruum. ff. ad. Lagf.
et. l. si alii. §. est et alia. ff. de ui. aut clam. De-
tenet indistincte seruientes excusari quod fecit
ob tutelam ut. l. ut uim etiam quia caritas in-
cipit a seipso ut. l. praes. C. de fui. et aqua. Item
quia licet proprium sanguinem redimere ut. l.
transigere. C. de transac. Ego crederem
distinguendum an seruienti incumberet ne-
cessario mortis propter periculum nisi uxorem
mandantis interficeret et tunc credere opi-
pe. ueram. aut erat aliquis spes salutis etiam
domino resistendo. et tunc tunc contrarium
crederem per iura supra allegata. Tu pon-
dera etiam que dixit bar. in lege ut uim. ff.
de iusticia et iure in penult. col.

Capitulum c. xxi.

Item ultimum principaliter que-
situm est quid sit finis buis belli
Quoniam buis solo patet per. a. di-
cta nam conservatio sui ipsius et bonorum est finis
buis libelli et hoc finaliter tendit et propter
hoc est promissum clara patet per supra dicta.

TRACTATUS. REPREHENSIVUS.

Capitulum c. xxi.

Equitur videre de quinto
tractatu tertii principalis
scilicet de particulari bello quod
fit ad defensionem corporis mitti
ci quod respiciat nuncupant
Circa quod uidendum est
unde et a quo ortum habuerunt repellicae et
propter quid insurrexerunt.

Capitulum c. xxi.

Adplando aliquantulum questus
et materiam repellicarum ponit
tam fundamentum propter quod
insurrexerunt repellicae quo pre-
missis examinabo exsian. Ecce altissimus crea-
tor a principio creauit celum et terram et mare et
que in eis sunt nec non angelicam et humanam
naturam spirituales et temporales et ipsa per seipsam
rexit et homini quem creauit precepta dedit
et transgredienti penam imposuit. Gen. ii. c.
Qualiter autem per seipsum rexit apparet.
Nam per se ipsum et non per ministrum de-
dicta puniebat. Nam chaim et lamech et quod-
dam alios reges puniuit ut legitur Gen. iii.
.c. et quinto. Et hec mundi gubernatio posuit
usque ad tempora Noe. Et tempore autem Noe
cepit mundum regere per ministros quorum
primus fuit noe de quo quod fuerit rector popu-
li apparet. Nam dominus commisit sibi admi-
nistrationem et gubernationem arce Gen. vi.
et vi. c. Et per archam significatur ecclesia et
qualiter dominus noe et filia commisit guber-
nationem legitur Gen. ix. cap. et licet
noe sacerdos non fuerit legitur tamen officii
sacerdotis exercuisse antequam leges populo da-
rentur Gen. viii. cap. In hac autem guber-
natione et uicarie successerunt Patriarche Re-
ges et Iudices qui fuerunt pro tempore in re-
gimine populi Iudeorum et illa durauit
usque ad Christum qui fuit naturalis do-
minus et rex noster de quo legitur in psal-
mo. Deus iudicium tuum regi da. Ipse autem
Christus duo luminaria dimisit in terris lu-
minare maius et diurnum scilicet summum pontifi-
cem luminare minus et nocturnum scilicet roma-
norum principes quibus commisit adminis-
trationem et gubernationem mundi uni in spiri-
tualibus et alii in temporalibus. Tempore
primitiuo quo dominus per seipsum guberna-
bat non fuit opus repellicarum. Cum per dominum
iusticia exhiberetur. Tempore noe et successo-
rum non fuit opus repellicarum cum per ministros
iusticia exhiberetur et subditi de populo re-
cognoscerent superiorem cui obtemperabant
Tempore precedentium summorum pontificum
et imperatorum romanorum cum omnes sub-
diciantur et de iure et de facto non erat opus
repellicarum cum per principes iuris ordine ser-

uato iusticie complementum exhiberetur.

Postq̄ aut̄ inperu paullip̄ cepit exina-
niri adeo q̄ nūc sit q̄ de facto nūc cognos-
cit sapientem ⁊ p̄ eos iusticia negligit idcirco
fuit op̄ subsidia in medio deficientib⁹ ordi-
natis quib⁹ extantibus ad illud nullaten⁹ re-
currendum. ff. de mīno. l. in causis. ff. de ope-
mou. l. nunci. l. in provinciali. Istud autem
remedium extraordinarium habuit ortum ex
iuregentium. Nam est quedam species belli
liciti. Nam licitum est ob tutelā corporis sui
arma mouere. ff. de iusti. ⁊ iure. l. ut uim. l. l.
C. unde ui ca. dūm de restit. spoli. Et ne dum
corpi sui priuati ⁊ individualis sed etiaz in-
fici. Nam universitas est unū corpus cuius
partes sunt singuli de unitate. ff. q̄ gloz
universitatis nomine. l. l. ⁊ sic universitati li-
citum est defendere partes sui corporis.

Habuit etiam ortum a iure diuino ut legi-
tur xxvi. q. ii. dominus noster. Expedie-
tis omnibus inferitur propter quid insurrex-
erit hoc remedium. Nam finaliter ut iusticia
debitum hostiretur effectum occasionaliter
propter defectum remediū insurgentes a ne-
glectu gubernantium ⁊ regentium populos
carencia recognitionis superiorum de facto
quo tempore fuerit opus hoc extraordinario
remedio. Ex quo inferitur q̄ etiam hodie
raro hoc remedium locum sibi uendicat. nō
negligente iudice seculari recursus habend⁹
ē ad ecclesiasticū de hoc competentī ex tēno-
re ⁊ ca. licet ⁊ capitulo ex parte quā illi sint
leg. na. per venerabilem licet etiam de facto
male optemetur. Quibus predictis re-
stat examinandi que sunt cure reprobationis

Tu pondera q̄ ea que hic narrantur per
prosum meum faciunt predicta ad aliud p̄-
positum supra in ca. Redeo ad primum ⁊ pri-
mo quero x. Pondera rationem propter
quam remedium reprobationis non nobilita-
tum quam allegat etiam bar. in tractatu re-
probationis in principio.

Capitulum c. xxiii.

De sit causa productionis que ma-
terialis que formalis que finalis
Uidendum est etiam de quibus-
dam questionibus circa hoc oc-
currentibus. Ad primum que sit causa p̄-
ductionis reprobationis hec est quare quib⁹ pos-
sit indicere reprobationis hic attendendum est
q̄ ut supra dictum est nulla lege positua ca-
nonica nec civili disponitur reprobationis indi-
ci debere. nam utraq̄ lege disponitur modus
consequendi effectus iusticie. ymmo lege in-
bibitum occupare rem propriam. C. unde uil-
li si quis instantem ⁊ l. existat. ff. que met. ca.
ymmo etiam hoc expresse inbibetur lege civil-
li ⁊ canonica ut in aut. ut n. sit p̄g. ⁊ c. uno
de iniuriis l. vi. Sed deficientibus iure posi-
tū remedio ad hoc fuit habendus recursus

ne fiat belli indicione q̄ deberent iusticia hec
autem belli indicione spectat ad illam solū qui
sapientes non habet ut. l. hostes. ff. de captiuis
Nam habens superiorem auctoritate propria
non potest violare iuris remedia. Ille ergo in-
dicere potest qui superiorem non habet s̄ iur
nec de facto. Expedi etiam q̄ ille contra
quem inducuntur non habeat superiorem ut
si habeat negligat iusticiam facere. Ex quo q̄
dam inferunt q̄ potestas ciuitatis qui non
recognoscit superiorē de facto non possit
indicare nisi specialiter habeat in mandatis.
Sed haberi debet recursus ad unitates
apud quam est plenus ius ⁊ eius auctoritate
inducatur. Istud non credo uerum ubi uni-
uersitas transfulerit omnimodam potestatem
in rectorem. Nam tunc potest totum q̄ uni-
uersitas sicut dicimus in habente generalem
cum libera ut. l. p̄curator qui. ff. de p̄cur.
Secus si limitatus. Inferunt etiam q̄ si comes
marchio uel similes subditus est principi q̄ si
ne principio auctoritate iudici non potuerit
ar. predictis regale quam tradidit in. c. olim
de restit. spoli. ⁊ hoc p̄cedit loquendo s̄ iur
cōmuni. Nam si loquamur fm dispositionem
iurium municipalium fm quem conceditur
facultas indicendi reprobationis. Illi indicare po-
terunt quibus a lege municipali concedit. Et
hec ut dixi conceduntur p̄pter urgentem
necessitatem sicut aliquando propter neces-
sitatem concedit has ciuitates alicui
sibi has dicendi. ff. de his que in fru. cre. l.
sit p̄cur. §. si debitorum. ff. q̄ ui aut. claz. l.
alios. §. bellissime. Ex predictis inferri
potest duorum iure petatur indicio reprobati-
onem. Nam si uigore statutorum concedantur
condit. ex. l. hoc petitur. ff. de condit. ex le-
ge una. Sin autem loquamur fm dispositio-
nem iuris cōmunis dicunt quidam q̄ nec ac-
tio nec officium intentatur ratio. Nam solo
iuregentium hec facultas conceditur quoniam
re omnia expediebantur via regia. ff. de
origine iuris. l. ii. in principio. Sic dicant
hodie repu ti manum regiam fm statuta di-
uina ut iur. gen. Sed non credo uerum. Nam
licet facultas non sit nisi seruetur modus tradi-
tus. Quia primo debet recurrri ad remedia or-
dinaria quibus deficientibus ad hoc recurrri
tur ⁊ hoc constare debet iudici requisito nisi
q̄ indicat reprobationis. Et si ille contra quez pe-
tuntur monitus comparuerit iudicis ⁊ de-
fensus ut. j. dicit ⁊ legē sentētia q̄ p̄neciat
indicendas uel non nihilominus fuit opus
actione uel officio. Nam secundum modum
petitionis formari debet sententia ut. l. ut san-
do. ff. communi diu. ⁊ ca. licet hely de symo.
Confirmatur nam licet de iuregentium hec
facultas processit tamen iure civili approba-
ta ē ex mente ipsius licet non uerbis expressis
Nam est ex mente iuris civilis ymmo etiam
ex uerbis q̄ contra rebelles ⁊ inobedientes
iur p̄cedunt manu militari ac. l. qui restitue

re. ff. de rei ven. Et sic punctus est remediū.
 implorationis officii ut eo hanc manu militis
 et iuratus remediis oportunitis deficientibus
 Dondens an lege civili vel canonica sint li
 cite repēlie unde bar. in tractatu repēlie
 ubi ponit etiam an in foro conscientie sint li
 cite repēlie et hoc in prima questione princi
 pali vide Jo. an. in regu. non debet aliquis
 reg. iuris li. vi. tractantem an in foro conscie
 ille cui concedit repēlie teneat. nā reg.
 repēlie sunt contra ius diuinum canonicū
 et civile ut refert ange. in consilio suo. quod
 incipit ex themate. unde que dixit bar. in l.
 nullus. C. de iudels et bal. in l. ex hoc iure. ff.
 de iusti. et iure sed concedantur eo casu quo
 quis non reperit iusticiam apud domini illi
 ciuitatis contra quam petuntur secundum
 doc. locis superius allegatis. vide bal. et bar.
 in aut. et ideo. C. ne uxores pro marito circa pe
 cipiam. vide ea que no. glo. et doc. in ca. l. de
 iuratis li. vi. vide bar. in l. generali. C. de re
 cu. li. x. et bar. in l. si. C. de nauticariis li. xi
 bar. in l. pro herede. §. h. de acquirē. hered.

Cap. c. xxv.

Estat examinare causam mate
 riam de materiali autem causa
 est dicendum vel videndum de
 materia in qua de materia circa
 quam de materia contra quam que est oblec
 tum de materia ex qua. Materia ex qua
 est causa ex qua hec facultas conceditur.

Materia in qua est persona vel suppositū
 cui facultas conceditur. Materia circa
 quam sunt res circa quas facultas hec conce
 ditur. Materia contra quam sunt oblectus
 est suppositum contra quod conceditur ut
 puta ciuitas vel alia universitas. Respon
 deo ad examinationem. Et primo querit qui
 bus conceditur. Et propter rationem superi
 us tactā. quod ut ciues mystici corporis ciuitatis
 ut. l. i. ff. de iur. iur. vniuersi hinc appellati ē
 ciuitas quasi ciuium unitas ut no. in ca. si ci
 uitas de senten. excomuni. li. vi. Et supra de
 dictum licitum ut collibet defendere corp
 sui ut. l. ut iur. ff. de iusti. et iure et l. i. C. ut
 ui. Et hoc procedit in cor pore individuali et
 mystico. Primo quero an incolis concedi
 debeant. Quidam hic distinguunt an incolae
 subeant onera et tunc concedi debeant. an si
 subeant et tunc concedi nō debeant. Ratio
 secundū membra nam quo non sentit. cuius
 nec cōmodum sentire ut. l. manifestissimū. §.
 sed cum in secunda. C. de fur. regula secūda
 naturam de reg. iur. et regula qui sentit li. vi.
 probatur per. l. qui sub p̄textu. C. de epil. et
 de. et l. i. C. de colleg. illi. li. xii. Probet
 nam non habet quis privilegia dignitatis ni
 si re ipsa gesserit. C. de consul. l. neminem li.
 duodecimo. ff. de excu. tu. l. sed et miles. §.
 quoniam. C. de testa. mili. l. pe. Tunc opt.

non puto iam indistincte ymmo puto distin
 guendum sic aut incolae non subit propter et
 contumaciam quia requisitus non subit
 ut tenetur. Nam inter ciuitatem recipientē
 quem ad incolatum et ipsam incolam tacite
 oritur quidam contractus ultro citroque obli
 gatorius quo incolae tenentur subire onera. ff.
 ad municip. l. i. et l. incolae et ciuitas tenetur
 ad eius p̄tectionem ut. l. illicitas. §. ne potē
 tiores. ff. de officio p̄sulis. Et hoc casu si de
 negat adimplere contractū p̄ parte sua nec
 ciuitas tenetur ipsam defendere nec ille hoc
 petere potest ut. l. iur. §. offerri. ff. de actioni
 empti. Aut incolae non subit onera quia in
 p̄ hoc p̄uilegiatus a ciuitate que opus remit
 tere potuit ut. l. si quis in conscribendo de
 pactis et de epil. et de l. a principe et tunc in
 cole concedi debent. Nam privilegia cōcessa
 in eorum fauorem reducere non debent in
 eorum lesionem. C. de legi. l. quod fauore re
 gula et grām. li. vi. Et hec intelligas de pri
 uilegiato post assumptionem. In pondera
 quod dixit bar. in tractatu repēliarum in
 scda questione principali bal. in aut. et ideo
 in vi. col. C. ne uxores pro marito.

Capitulum c. xxvi.

Secundo quero an ciuitas nō sub
 iectis iurisdictioni ciuitatis et al
 non facientibus faciens sunt con
 cedere repēlie. Quidā distig
 unt. Aut non sunt subiecti subiecti ex pri
 uilegio ut clari ut. l. i. et aut. statim. C. de
 epil. et tle. Aut propter dignitatem seculares
 ut. l. i. C. ubi lena. vel clari. ff. de iura. iur.
 per totum et talibus sunt concedende. Aut si
 subeant p̄pter contumaciam et tunc non. Rō
 primi est ne redundet in eius lesionem quod
 in fauorem concessum est. Et quia in ciuitas
 ex naturitate p̄ficatur obligatio inter ipsas et
 ciuitatem que non potest mutari. ff. ad muni
 cipal. l. assumptio secus in incolae quia incolae
 tunc non p̄ficatur nisi per receptionem ut. l.
 i. ff. ad municipal. Ratio secūda est propter
 contumaciam suam. ff. ex qui. ca. ma. l. sed et
 si p̄ emptorem. §. sed si dom. Tu pondera
 que dixit bar. in tractatu repēliarum in
 v. questione principali.

Capitulum c. xxvii.

Ergo queritur an ciui per con
 uentionem concedantur repē
 lie contra ciuitatem originis.
 apparet quod non. nā ubi ex aliquo
 facto ius ubi queritur si illud fuit meum nō
 obligo ut. l. sed et si quis. §. et generaliter. ff.
 de usufruc. lega. Sed si fiat in iuria huius cui
 Ciuitati originis queritur ius indicendi repē
 alias ergo contra eam non competit
 Confirmatur quia ciuitas originis p̄fertur

ut. l. assumptio. ff. ad municip. Confirmatur
Nam ciuitas originis poterat in subditis sui
statuere anteq̃ efficeretur ciuis alteri per
conventionem nec ciuitas per cōventionem
potest conquiri. Confirmatur a simili uis
fructuarii qui nūciare potest noui op̃ oib̃
p̃ter q̃ domo ut. l. i. in ff. de ope. no. nuci.

Confirmatur a simili nam habens publicia
nam illam intentat contra omnes preter q̃
contra dominum ut. ff. de publi. l. penultims
probat tex. in. l. de iure. ff. ad municip. Na 3
bis que aguntur inter ciues 7 ciuitatem soli
coram iudice illius ciuitatis agi debet.

Confirmatur nam remedium extraordinariū
est ut supra probatum est. extra ordinariū au
tem remedia dantur non filio contra patres
C. qui 7 aduersus quos. l. si. sed maior ē po
testas ciuitatis in cinem q̃ patris in filius. ff.
de iusti. 7 iure. l. i. l. 7. l. postlimini. §. filius. ff.
de castren. pecu. In contrarium p̃batur an
si duo hñt eisdē subditi ut q̃ui defeder̃ ad v.
iniurias q̃ ab alio inferret. Nā ciuitas punit
pr̃e 3 offendente filii. ff. de p̃nici p̃ totū. Cōfir
mat. Nam si duo habēt ius in re licet unum
ius sit debilius alio tamen habens ius debilius
agit contra habentem ius potentius si dāpnū
ficiat rem in qua concurrant illi duo iura. ff.
ad. l. aquil. l. item mella. §. si. l. si dominus
seruum. c. ti. Cōfirmatur. Nam si duo hñt
domini eiusdem serui si unus in eum delin
git potest per alium coherceri. ff. ad. l. aquil. l. i.
Confirmatur. Nam p̃ iniuria repellēda l3
comocore amicos. ff. de vi 7 vi ar. l. i. §. cu3
igitur 7 de homici. significasti de senten. ex
cōl. delicto. Solutio. Quidā dicunt indistric
te q̃ possint concedi 7 ratio est quia facultas
iudicendi repressalias succedit in locū defici
entis iurisdictionis. Sed si ciuitas offendit
clauem licitam est superiorem adire ut. l. me
tum. §. animaduertendum. ff. de me. cā. ergo
deficiente iurisdictione locus est repressalias
probat per. l. sed si ex dolo. ff. de dolo.

Confirmatur na3 quolibet potestas censetur
legittima potestas cum quia bene utitur nō
autem cum sp̃olat ut. l. ei cum qui fundus. §.
tutor. ff. proempto. ff. de furt. l. inter di. §. q̃
tutelam. Et sic dicii procedere hinc inde al
legata. Ego non puto hanc conclusionem
sic indistricte ueram. Sed puto distinguen
di an iniuria irrogata a ciuitate originis in
furgit ex facto precedentē cōventionē per
qui effectus est cuius alterius ciuitatis. An
inurgit ex post comisso. primo casu nō pos
sint concedi repressalie per ciuitatem cōuen
tionis. nam apparet q̃ sit pars corporis defe
dendi tempore quo iusticiam patitur. Nam
aliter ad nouam ciuitatem non transit hoc
ius. ff. de seruo corrup. tolli. §. si. ff. de positi.
l. i. §. si seruus 7 l. quicūq̃. ff. de ac. 7 obli.
Der quem inferitur q̃ facto ciuis cōuēctio
nem post iusticiam non debent concedi rep
salie. Secundo casu procedit predicta solutio

In pondera que dixit bar in tractatu re
pressalium in quinta questione principali i
uersi. ad tercium queritur.

Capitulum cxxviii.

Quarto queritur an ciuib3 7 ha
bitis p̃ ciuib3 limitate tñ. Ecce
potestas ciuitatis quo ad quid ē
ciuis ut. l. ciues. C. de incolis scti
pendiarii etiam ubi merentur stipendium cō
ueniuntur ut. l. municipes. §. si. ad municip.
Scholares etiam quo ad quid ut p̃teantur a
rectoribus ciuitatum ut in prima cōstit. sctoz
7 aut. habita. C. ne filius p̃ pa. nunquid tali
bus repressalie sunt concedende quidā di
cunt q̃ his in quibus habentur p̃ ciuib3 limi
tate sunt concedende repressalie ut si scolarī in
iuria inspectantibus ad studium fiat 7 militi
in spectantibus ad miliciam in aliis non repu
tentur de corpore. Pondera que p̃dicant
a bar. In tractatu repressalium in quinta q̃s
e principali in vñ. ad quintum queritur. 7c.

Capitulum cxxviiii.

Quinto queritur An si ex pacto
uel statuto ciues huius ciuitatis
tractari debeant ut ciues alteri
us ciuitatis ipsis concedi debeāt
repressalie per ciuitatem in qua tractari dñt
ciues. Solo. Ponderanda sunt uerba legis
7 statuti. Nam p̃ illa ṽba tractentur ut
ciues non efficiuntur ciues ut. l. iuris appel
latione. ff. de vñ. signi. Et ibi nō per la. de are.
Illa ergo uerba intelliguntur ut tractentur
in his que de iure cōmuni fieri debent ut. l.
ei qui fundam. §. si tutor. ff. de empto ita sol
uant quidam. hanc conclusionem non cre
do ueram ymmo credo ipsis iudici debere.
Nam fateor q̃ per illa uerba non est effectus
ciuis sed ei debentur que debentur ciui. Na3
hoc p̃bant uerba a quibus recedi non debet
nec eorum p̃p̃lo significato. ff. qui. 7 a qui. l.
prospexit. ff. de le. iiii. l. non aliter 7. l. i. §. si
is qui neuem. ff. de exercito. Sibi ergo con
cedantur repressalie ut supra deductū est ergo
Nec obstat quod dicitur q̃ sibi concedi de
bent que de iure cōmuni cōpetunt Na3
hoc remedium seruata debita forma non est
iure cōmuni inhibitum In pondera que di
xit bar. in dicta repressalium in v. q. prin
cipali in uersi. ad vi. queritur bol. in autē. 7
ideo. C. ne uxor pro marito in vii. col. 3
unum pondero quod nō tetigit proauis me
us 73 ei qui post q̃ passus est in iusticiam
factus est ciuis sint repressalie concedende
7 concluditur q̃ non. Nam est quoddā cor
pus mixtum ut est una ciuitas 7 collegium q̃
appellantur corpora ut habetur p̃ glo. in ru
brica. ff. de colle. illici. unde ciuitas pro eo q̃
est de corpore suo. ostendendo ab iniuriis po

est concedere repelalias non autem pro eo quod est extra corpus sui. Juxta illud quod enim ad nos de his que foris sunt iudicare ca. gaudemus de vino. Ergo ei qui tempore denegare iusticie erat locum licet posita efficiatur ciuitas non possunt de iure concedi repelalie ar. i. l. i. §. si seru. ff. de positi. unde que dixit bar. in tractatu repelalium in quinta. q. principali in uer. ad quartum q. ratur. Sed predicta limita nisi inferretur in iusticia acta permanens puta si quis teneatur in rem suam. Nam tenere est actus continuus ideo ratione presentis in iusticia habet petendi repelalias. secundum bal. in anten. 1. ideo. C. ne uxores pro marito. Unde. l. si dominium. ff. de furtis c. Item pondera an homines considerati possint impetrare repelalias. Nam si est sedes propter quod una ciuitas habet alteri quo ad protectionem et tunc idem iudicandum est quod de proprio ciue. Et ideo possunt consequi repelalias. unde b. in anten. 1. ideo. C. ne uxores pro marito. unde. l. non dubito. ff. de captiuis. quicquid ibi dixerit bar.

Cap. c. xxx.

Estat uidere de materia circa quam conceditur hoc est de actus et de claps. Nam in rebus mobilibus illorum contra quos conceduntur que reperte fuerint in territorio ciuitatis conceduntur. Sed circa hoc queri potest de pluribus. primo an contra reos eorum qui capi non possunt uigore repelaliorum iudici possint repelalie. Solutio si sint persone que capi non possunt propter inabilitatem in argente ratione etatis uel furoris uel consilium. tunc in eorum res exerceri poterunt repelalie. ff. de his no. l. i. l. i. §. in aut. ut nulli iud. §. necessarium. Sin autem in personas exerceri non possunt propter quidam propter gatiuum eis a iure concessas ut sunt scolares et ambasciatores. tunc nec etiam contra res eorum quas deserunt necessarias pro studio uel ambasciata non poterunt exerceri. In aliis autem sic. ff. de publi. l. publican. Per hoc inferatur solutio alterius questionis. Ecce ambasciatores uel scolares secum deferunt res aliorum. nam quid in illas exerceri poterunt repelalie dic q. non si sunt res necessarie ut equi uel similia ut. l. cenforia. ff. de uerb. sig. alias sic. Pondera ea que dixit bar. in tractatu repelalium in viii. q. de principali i. vii. Ad primum queritur et in uer. ad secundum querit unde bal. in aut. 1. ideo. ca. no. ux. pro ma. in octaua col.

Cap. m. c. xxxi.

Secundo queritur an repelalie simpliciter iudice exerceri possint contra bona existentia in territorio

rio ciuitatis cetera que sunt iudice et capiuntur et reducuntur intra territorium ciuitatis idcirco. Quidam dicunt q. non quia extra territorium. ut. l. i. l. i. territorium. ff. de iure o. iudi. et l. cum unus. §. is cuius. ff. de bo. auct. iudi. poss. et. c. ii. de cōsti. li. vi. Preterea ingredi territorium alienum conceditur cum maiore tumultus ergo in dubio non uidetur concessum ut. l. non est singularis. ff. de reg. iuris.

Hanc conclusionem non credo ueram. Nam propter defectum iurisdictionis recurritur ad manum regiam deficiente formula ius solemniter dicendi. Et sic ubique hoc fieri potest quia ubique licitum est cuiuslibet defendere corpus suum ut. l. ut uim. ff. de iusti. et in re et. l. i. C. unde in etiam in simplici et generali concessione sua operari debent generaliter ut plerumque. ff. de le. p. l. i. §. generaliter. etiam contingit et repelalias ubi operari ut si contra ciuitatem distantem cuius ciues nihil haberent nec ciues accederent in ciuitate indicente. Sic ergo intelligantur ut in omnem euentum aliquid operari possint. ff. de le. l. i. l. i. quando. ff. de re. du. l. quotiens de reg. iur. l. quotiens. Pondera dicta per bar. in tractatu repelalium in octaua questione ne principali in v. ad tertium queritur.

Cap. m. c. xxxii.

Tertio queritur An si una ciuitas indicat repelalias contra alias possit rectori ciuitatis indicente scribendo rectori ciuitatis contra quam exercere repelalias in res ibi sitas. Dicunt quidam q. licet si in executione sitis hoc faciat ut. l. a dno pio. §. l. ff. de re in. l. cum unus. §. l. ff. de bo. auct. iudi. poss. tamen hoc casu non est ratio. Nam indicio repelalium est quoddam particulare bellum ad quod non potest quis compellere alium q. subditum ut in uerbis fructuum hic finitur lex Conradus c. dominus. Sic dicere non credo. Nam supponit q. in executione sitis possit iudex huiusmodi sitis compellere iudicem bonorum etiam non subditum ad exequendum q. est falsum quod par in parem non habet imperium ut. ff. de arbit. l. nam magnus. ff. ad trebell. l. ille a quo §. tempestuum de elect. c. innouit. Male tamen facit qui exequitur adeo q. propter hoc conuenitur coram superiore suo. Nam donec seruata iuris dispositione. Iusticia suorum cōsequi potest effectum non debent offendi iuris regule. In neutro ergo casu uendicat sibi loci compulsiō. Sed utroque casu honeste faciat exequendo quis sicut non deficiente iurisdictione cum recurritur ad repelalias debet huic uari licet compelli non possit in ciuitatione autem federatis de quibus in. l. non dubito. ff. de captiuis hoc utentur de plano. Pondera dicta per bar. in tractatu repelalium in octaua questione principali in v. ad quartam querit.

Capitulum c xxxiii.

Estat videre de materia contra quas quod proprie appellat subiectum. Circa quod plura queruntur.

Et primo queritur an si ciuitas mediolansis repulsiua induxerit contra bononenses vel homines de bono. possint exerceri contra incolas ciuitatis bononie vel de bononia. Solutio ista verba bononenses et de bononia idem important. ff. de excu. tu. l. sed reprobari. §. amplius et ibi glo. Solutio ista verba uoces bononenses respiciunt municipales ut. l. i. ff. ad municip. Et uerbum municipis est genus ad ciues et incolas ut no. C. de incolis. l. ciues. probat tex. ff. ad municip. l. filii. §. municipales. ergo inferendo de primo ad ultimum sequitur quod ex natura uerborum contra incolas possint exerceri repulsiue. et hec uera quidam incole subeunt onera ut. l. i. ad municip. secus si non subeant. Tu pondera ea que dixit bar. in tractata repulsiuarum in vii questione principali in §. ad primum queritur. uide bal. in aut. et ideo. C. ne uxore pro marito in viii. col. in fine.

Capitulum c xxxiiii.

Secundo queritur retento eodem themate ut puta si ciuitas mediolansis induxerit repulsiuas contra homines de banonia siue bononenses. an exerceri possint contra bononenses alibi morantes. quibdam dicitur quod sic quia origo non mutatur. l. assumptio. ff. ad municip. Alii distinguunt an inducantur contra homines de prouincia. et tunc non exercentur contra alibi morantes quod non censentur de prouincia ut. l. prouinciales. ff. de uerbo. sig. Aut contra homines de una ciuitate et tunc procedit una opinio. Ter cii distinguunt an alibi morantur tamen contra eandem prouinciam et tunc contra alios exerceri possunt. aut in alia prouincia et tunc secus per ea que no. glo. in. l. adoptionibus. C. de opt. Quarti dicunt quod secundum propriam significationem uocabuli alibi morantes censentur bononenses. Sed secundum comunem usum loquendi. secus et comunis usus loquendi per ualet. ff. de le. iiii. l. liberos. §. et tamen cassius. Et sic contra istos non poterunt exerceri. Alii dicunt quod contra bononenses alibi morantes onera tamen subeunt bononie poterunt exerceri. Sin autem non subeant secus ut. l. i. ff. ad municip. l. sed et reprobari. §. amplius. ff. de excu. tu. et l. cum scimus in fi. C. de agri. et cen. Pondera ea que tractantur per bar. in tractata repulsiuarum in vii. questione principali in §. ad finem queritur uide bal. in aut. et ideo. C. ne uxore pro marito in vii. col. uide ange. infra. de iur. naturali. §. sed naturalis in fine bar. in. l. p.

uinciales. ff. de §. signi. fo. de inola in rubel. solu. ma. io. an. in addi. spe. in ti. de iniuriis et dampno dato bal. in. l. si eadem. ff. de officio iudiciorum bal. in. c. l. de forma fidei co. in. c. statutum. §. cum nomen in ultia col. Sypt. bar. in. l. i. ff. quilibet iur. bal. in. l. adoptione C. de adept. pc. de ancha. in. c. l. de iniuriis et damp. dato li. vi. pau. de castro in dicta. l. si eadem bar. in. l. huiusmodi. §. legatum. ff. de le. l. bar. in. l. tutelae. §. si ff. de capti. dimi.

Capitulum c xxxv.

Tercio queritur An possint exerceri repulsiue contra ciues et incolas bononenses onera subeunt bononie qui etiam sunt ciues mediolanses uidetur quod possit contra eos exerceri. Nam si potest ciuitas indicare contra non subditum Confirmatur. Nam proprietarius potest petere ut usufructuario denegetur usus utendi propter contumaciam suam et econtra ut. l. si proprietarius et l. hoc amplius. §. si eorum et §. sequi. ff. de dampno infec. Et simili ergo sic hic in duabus ciuitatibus in eandem ciuem inuoluntariis. In contrarium tenet quod eadem indistincte ratio. Nam hoc in succedit in locum deficientis iurisdictionis sed ciuitas in ciuem suam bene potest iurisdictionem exercere ergo non subicitur repulsiua ut. l. i. §. utque. ff. si quis te li. esse iussit. Preterea ciuitas tenetur defendere ciuem suum. Ergo repulsiue indicare non audent eorum ut l. mendicantem. ff. de euiet. Preterea si ciuis mediolansis artaretur tunc ciuitas contra seipsam pderet uidere et id quod dicitur. ff. de iure fisci. l. i. fraudē. §. neque. Hanc conclusionem non puto ueram indistincte. immo si de facto non possit ciuitas artare ciuem suum. etiam ciues ciuitatis contra quam inducuntur repulsiue optine contra eum exercebantur repulsiue. Nam propter defectum iurisdictionis inducuntur ut supra pluries tactum est. Sed de iure non debet iurdictio deficere cum tunc hunc omnes subiciantur principi. ff. ad l. ro. de inc. l. de precario ix. q. iii. c. cuncta p munum et ca. per principalem sed de facto. Deficit quod de facto non cognoscunt sicut igitur de facto deficere potest cum non subditus iniuriatur. Sic et de iure subditus de facto resistere potest. Et sic recurri potest ad remedium ex ordinari. scilicet tunc quod subditus si artabit do nec spualiter contra non subditum processum fuerit iuxta ordinem scripto nec processu sententia possit effectus propter facti rebellionem. Tu potest dicta per bar. in tractata repulsiuarum in vii questione principali in §. ad tertium queritur.

Capitulum c xxxvi.

Quarto quero an in mulieres bononenses exerceri possint apparet quod sic. Nam in eis habet loci

postulatum ut. l. i. c. de capti. Contra-
riam est verum. nam in personam capi non
possunt. C. de offi. eius qui vires alte gerit au-
tem. sed hodie. l. c. de ex. ce. re. in. aut. h. no
no iure. l. illa facultas concessa a iure gen.
debet intelligi civiliter. ff. de serui. l. si cui.

Donderi ea que predicantur a bar. in tra-
ctu repelalarum in vii. q. principali in v.
ad quantum queritur.

Cap. c. xxxvii.

Quinto quero. An contra cleri-
cos bonon. possit exerceri tex. e.
q. no in ca. uno de iniuriis li. vi

Quid de clericis coniugatis de
bis dicen. ut ca. uno de cle. coniuga. li. vi.

An episcopo negligente facere iusticiā de
clericis suis cum haberi non potest ad superi-
orem recursus q. epus est scismaticus possint
iudici repelalie contra clericos eisdem per
iudicem secularem. Quidam in hoc dubitant
nec est dubitandum nulla est cōcessa p̄as cō-
tra clericum qualitercunq. delinquentē. ut
ca. contingit. l. in audientia de sen. exco. l. ca.
si iudex laicus eo. ti. li. vi. poterunt po-
terant ergo coherceri per superiorem suum
et poterit haberi recursus ad superiorem iudi-
cem secularem per viam revocationis ut ca.
i. de offi. ordi. xxiii. q. i. regum. l. ca. ad mil-
itantes et ca. princeps. Donderi narra-
ta per bar. in tractatu repelalarum in ver.
ad quintum queritur in vii. q. principali. uis
to. doctores in dicto ca. l. de iniuriis li. vi.

Cap. c. xxxviii.

Septimo queritur An contra bo-
nonienles cunctes paduas pro stu-
dio possint exerceri. uel etiā stu-
dentes bonon. tex. est q. non in

autem habita. C. ne filius pro patre et hoc uē-
dicat sibi locus si studcant iura in locis preui-
legatis privilegio studiis. Secus autem in
aliis studeant iura. ut in probemio. fori. §.
hec autem tria. In aliis autem facultatibus
ubiq. doceri potest ut. l. si duos. §. cum autē
ff. de exco. tu. Et quod dictum est de sco-
laribus idem dicit de scriptoribus et bidellis
et accidentibus can. scolarium ut. l. i. c. de
mil. testō. l. i. ff. de bo. po. ex te mili. Idez
de patre et aliis agnatis qui irent ad uiden-
dum filium et agnatum in studio. ff. de iudi.
li. ii. §. idem in glo. super uerto uenerit.

Donderi ea que narrantur per bar. in tra-
ctu repelalarum in vii. q. principali in v. ad
sextum queritur. x. uide bar. in. li. §. legatis
ff. de iudi. lii.

Cap. c. xxxix.

Octauo queritur an contra bono-
nic. ambasiatores possint exerce

ri So. non poterunt ut. l. i. ff. de legationi-
bus. ff. de iudi. l. iiii. §. legatis et uide de foro p̄
pe. ca. si. Donderi ea que predicantur a
bar. in tractatu de repelalarum in vii. q. cō-
principali in uer. ad septimam queritur uē-
de bar. in. l. prima. §. legatis. ff. de iudiciis.

Cap. c. xl.

Uno queritur An cōtra Bono-
nienles cunctes ad nundinas pos-
sint exerceri tex. est in. f. una. C.
de nundinis q. non. An p̄tra
euntes ad sanctum Jacobum uel ad aliam pe-
grinationem possint exerceri. rīdeo nō ut de
cleri. pegri. per totum. C. cōmunia de succe.
autentic. omnes ibi liberi. Idem de eun-
tibus ad locum indulgentie propter tene-
dam hospitium uel aliquid simile in fructum
accedentium pro indulgentia. An contra
Bononienles vagantes qui vi ventorum de-
seruntur ad ciuitatem indicentem exerceri
possint rīdeo q. nō p̄ aut. nauigia. C. de furt.
Ad idem de nauis. l. i. li. xi. An etiā p̄tra
illos qui in las uocari non possunt poterunt
exerceri qui enumerantur in. l. ii. ff. de inius
uoc. rīdeo non. Ratio Nam si forent condē-
pnati non possant capi multo minus p̄ delicto
ut debito alterius hoc fieri poterit. Ex
quo inferitur q. si Bononienlis eligeretur in
potestatem mediolanensem ibi non posset de-
tineri vigore repelalarum. Et si Bononien-
siret ad ciuitatem Mediolani. propter finis
conflagrante. Et idem in similibus casibus qui
enumerantur in dicta. l. ii. ff. de inius uoc.

Donderi nōta per bar. in tractatu repel-
alarum in vii. questione principali in v. ad
octauum queritur et in v. ad nonū queritur
et in v. ad decimum queritur cum sen. de pe-
grinis uide bar. in aut. oēs pegri. C. cōis
de success. bar. in. l. i. §. legatis. ff. de iudi.

Cap. c. xli.

Ecimo queritur An contra bo-
nonienlem potestatem mediola-
ni ibi in iusticiis facientē possit
concedi repelalie Ja. de bel. in
aut ut non si. pigno. tenet q. sic p. l. i. ff. q.
quiq. iur. Alii distinguunt an fecerit te-
lem iniusticiam p̄ qua conueniri non possit
officio dñe ante uel sit talis qua conueniri nō
possit ut. l. pars lraz de iudi. l. i. ne magrā?
ff. de iniuriis tunc non possunt iudici. sin-
to autem officio poterunt iudici prius requi-
sito syndicato nec debet requiri iudex ciui-
tatis hie qm̄ ibi conueniri nō debet rōne talis
omissi. C. ubi de ratio. agi oportet. l. i. l. ii. l. i.
C. ut omnes tam ciuiles q. crimi. l. una et in
aut. ut iudi. siue quoquo iustis. §. necessita-
tem. Sin autem talis sit qua cōueniri pos-
sint tunc poterunt iudici. Hanc solutionem
non puto ueram in hoc secundo membro. Nos

reprehensibile indicantur in defectu iurisdictionis
deficientis. Si ergo durante officio queri
possunt et in loco commissi ut in l. ii. C. ubi de
ratio agi oportet et ut oēs tunc ciuiles q. cri. i
l. l. ad qd ē loc. rephensibilis. Nā puto uerā i pri
mēbro ubi dī q. finito officio possit idici nā si
nito pōt queri. et iur. sōt suari ergo si ē op
hoc remedio. sateor tamen q. utroq. casu
ubi per uiam iuris non possit arceri. recurrē
dum esset ad reprehensibiles et hoc casu non est
requirendus iudex ciuitatis proprie q. super
hoc non potest ius facere per iura supra alle
gata. Pondera no. per bar. in tractatu re
prehensibilium in vi. q. principali in uersiculo.
ad primum queritur.

Capitulum c. lxi.

Undecimo queritur an contra of
ficiales potestatis uel rectoris in
iusticiam facientis possint indi
ci reprehensibile Jac. de bel. tenet q.
sic. Alii dicunt hoc uerum ubi off. expresse
iurauerit rectore ad faciēdū iusticiā ut. C. q.
aduo. dīuer. iudi. l. per bāc. C. de execu. mili.
l. p. li. x. Sin autem officiales expresse cō
tradixerunt non possint contra tales indici
l. quoniam. C. de appel. Sin autem officia
les nec consentiunt nec cōtradicunt quia ab
sentes uel ignorantes tunc etiam non possint
ti. l. i. in prin. ff. de ma. cōue. Sin autē sit
presentes nec consentiunt nec contradicunt
tunc si sunt officiales deputati ad uerū offi
cium qui non uocantur ad cōsilia ut sunt no
tarii et loci baronarii. Tunc etiam contra ta
les non poterunt indici. ff. de ma. cōue. l. i.
Et ratio q. nō poterunt resistere. C. ut omēs
tam ciuiles q. crim. l. i. §. officium. Sin
autem sunt officiales assumpti ad cōsulēdū
tunc contra illos poterunt indici. Uide
bar. in tractatu reprehensibilium in vi. questio.
principali in uersu. ad secundum queritur.

Capitulum c. lxi.

Decimo queritur an cōtra cō
sules priores ciuitatis denegantes
iusticiam possint indi
ci Jac. d. bel. dicit q. sic. Alii di
cūt hoc uerū cōtra presentes. Secus tamen
contra absentes q. contra eos ut cōsules in
dici non poterunt ut. l. i. ff. de ma. que in pri
cipio. Pondera que narrantur per bar. in
tractatu reprehensibilium in sexta questione pri
ncipali in uersiculo ad tertium queritur.

Capitulum c. lxi.

Decimo queritur an contra singu
lares personas possint indici pe
nitentes innocentes propter delictum
domini uel alterius prius
et de quo non sit iusticia Jaco. de bel. dicit q.

non. q. nō debet quis gratiari pro delicto alte
rius regula non debet de regalis iuris li. vi.
Alii contra per ca. dominus xxiii q. ii. nam
in sententia interdicti puniuntur singuli et
innocentes ut ca. si sententia de sententia ex
co. li. vi. In bello iusto reperiuntur innocen
tes. sed reprehensibile sunt quoddam bellum par
ticulare etiam licet captus sit innocens ta
men ciuitas habet ius in eum et hoc uidetur
seruari. Pondera no. per bar. in tractu repre
hensibilium in vi. q. prin. in. v. ad q. tunc q. ritur

Capitulum c. xlv.

Undecimo queritur An contra
homines subditos quoad quid ci
uitati hosti. non autē plene indici
possint. Solutio si sint ciuitates
et universitates simpliciter suppoite ciuitat.
bono. sed ex pacto habent aliquas exemptio
nes et iurisdictiones contra istos indici pote
runt quia non sunt subiecte sed si quo ad qdā
se subiecerunt et contra istos propter delictum
domini habent in eos subiectas non inducere
tur reprehensibile quia sunt libere ut. l. non dubi
to. ff. de captiuis sed propter delictum dictarū
ciuitatum indici poterunt sicut et bellum li
citur fieri poterit. Pondera nōta p. bar.
in tractatu reprehensibilium in vi. questione pri
ncipali in v. ad quintum queritur.

Capitulum c. xlv.

Undecimo queritur An p. tra
certum genus hominum facere
iusticiam deneganti indici pos
sint reprehensibile. Et dicendum est q.
sic seruata forma. Tu pōdera nōta p. bar.
in tractatu reprehensibilium in vi. questione
principali in v. ad sextum queritur

Capitulum c. xlv.

Estat uidere de causa materiali
ex qua insurgant reprehensibile et ē
defectus iurisdictionis. Nam
primo debet requiri iudex qui si
negligat nec haberi potest recursus ad supio
rem tunc cōcedi possunt. Circa hoc queri
potest de pluribus. An requiri debeat iudex
ut iusticiam faciat anteq. reprehensibile concedat.

Capitulum c. xlv.

Primo queritur. Quis debeat
inquirere iudicem ut iusticia fa
ciat. p. pars iniuriam passa et iu
dice negligente debet adire rec
torem ciuitatis p. p. et facere fidem de reg.
fide et neglectu et petere ut f. g. rat. iterato ut
iusticia fiat et t. co. negligente poterit idici
q. aut requiratur p. requisitio p. bar. in aut. ut

differentie iud. in principio coll. iii. Pondera
ea que no. bar. in tractatu repelalarum in
secunda. q. principali in ver. ad primū querit

Capitulum c xlii.

Secundo queritur an si pars du-
bitaret litigare in ciuitate inur-
riam inferentis propter eius po-
tentiam. An iudex suus possit scri-
bere ut i alios progēt iuridici. Et eligāt ar. iure
ciuili. pro certis personis utpote miserabilibus
hoc clarum q. sic ut. l. in fl. C. quando im-
perator inter pu. et uida. iure canonico lac-
pmissum est bodie per ca. statutus. §. cū uero
de ppt. li. vi. quo ad articulum impetrati-
onis. Pondera ea que narratur a bar. in tra-
ctatu repelalarum in secunda questione pri-
cipali in uersiculo ad secundum queritur.

Capitulum c l.

Tercio quero quis iudex requiri
debet ut iusticiam faciat. So-
lubet primo requiri iudex ciuita-
tis inuariantis et tunc si negligit
iusticiam facere adhibet proximum superiorem
quo deficiente adhibet principem in autē. ut
diff. iudi. in principio. Quibus modis defici-
entibus omnibus inducentur repelalie p. ci-
uitatem propriam que succedit in locum de-
ficientis iurisdictionis. Sin autem nō ne-
gligat sed in iusticiam faciat pronuntiando l
ique. tunc si ciuitas habeat iudicem appella-
tionis deputatum ad ipsum per appellationē
additur. Et si non habeat indicentur repel-
alie. nam est quod imputari poterit ciuitati
q. non deputauit iudicem appellationis.
Sin autem iudices appellationis bla iusticiā
fecerant tunc uidetur pars destituta ut sub-
dico cum nō liceat tercio appellari nec uidē
posse dici repelalie cum non desererit iuris
dictio sed dici potest q. si ob grām pctis inleg
pnūciauit tūc poterit peti restitutō ut. l. p.
fecti pto. ff. de minor. Sin autē ob grām illonū
qui regunt tunc pcti tenetur ad interesse ut
C. ne lice. po. l. i. et de bis qui po. l. l. et sic ad
interesse tenentur actione in factum. ff. p. lo-
cio. l. quicquam. Sin autem inique lata sit
ex solo iud. motu tunc est destituta omni sub-
sidio ut supra dictum est. Pondera narra-
ta per bar. in tractatu repelalarum in .ii. q. se
principali in uersiculo. ad tertium queritur.

Ca. c li.

Quarto queritur qualis iniusticia
requiritur ut repelalie inducā-
tur So. p. modico non indicun-
tur cum hoc sit remedium extra
ordinarium quod non datur pro modico ut. l.
sco. ff. de in iote. restit. et l. si olei ff. de dolo

requiritur etiam q. totaliter sit p. lesi sc. si
parcialiter. l. quotica. C. de preci. impa. offe.

Nam totaliter iusticiam non facit. C. de
seruis su. l. mancipia et l. liti. §. in cum. ff. de
demp. infecto. Tu pondera ea que pdicāt
a bar. in tractatu repelalarum in .ii. q. sione
principali in vli. ad quartū queritur.

Capitulum c lii.

Quinto quero An dicatur nō pos-
se haberi copia superioris ut sit lo-
cus iurisdictioni repelalarum
Solutō ubi non potest haberi de
iur. nec d. facto tē ē op. ut. c. dila. xxii. q. ii.
et l. nllus. C. d. iudicis. Sin autē d. iure haberi
potest non tamen de facto quia non obediuit
tuc idem. Sin autem haberi potest d. iur.
sed difficile est haberi de facto utpote im-
pator cum sit ualde distans et pars est paupri-
ma tunc etiā est locus. ff. de pig. act. l. si fimo
ff. de diuersis et tempali prescrip. Pōdera
ea que tractantur a bar. in tracta. repelalaz
in secunda questione principali in uersiculo ad
tertium queritur et c.

Capitulum c liii.

Estat uidere de causa formali et
hoc est duplex. Nam est forma in
dicendarum et est forma exercē-
darum. forma autem indicēda-
rum implicat formam defensionis illius cōtra
quem indicantur. Et circa hoc etiam d. pla-
ribus querendus. Et primo queritur quo
iure concedantur hic dicit aliqui quod si cō-
cedantur p. illos qui non recognoscant supio-
rem ab illis hoc peti non debet iure actionis
nec per officiz sed debet requiri man. regle
per quam omnia expeditantur ut. l. ii. ff. de
origine iuris. Soli enī illud regit qd ius
gētū iurebat. l. q. cā pp. quā pcedat sit uera
salus tamē defensionibus illi ptra quem cas
hoc sit iure naturalis ut in de. pastoralis. §.
ceterum de re iudi. et habenti repelalias iur.
sicut offendere concessionem sine alio proces-
su et recte presumantur cetera agitata. Nam
iustar est sacrilegii. C. de sacrileg. Et hec est
uera in territorio concedentis uerū. q. gēa
contra quam concedantur uti posset eodem
iure per titulum q. quilibet iuris. Et si aliter
ex pacto de hoc deberet cognoscere. ut puta
arbitrē uel alii inculmberet cuius probandi
illi cui sunt concessa seruata forma eorū que
iuregentium requiruntur. Ideo tucias ē q.
fiat processus in scriptis redigatur. et hoc te-
net archi. in ca. uno de in iur. l. vi. Nam te-
net q. precedere debet monitio et sententia
super neglectu. Et ita sentit gualdo con-
cordiensis episcopus. Sin autem repelalie pe-
tantur ab his quibus hoc concessa est a sta-
tutis. tunc si statutum tradit ordinem tunc

q̄ facultas concedendi repēsalas procedit
a iure civili cum statuta sint ius civile ut. l.
omnes populi. ff. de iusti. 1. tunc debz im
plozari officium officialis libellus porzigi po
citari 1 pcedi ut disponunt iura. Pondera
nōta p bar. in tractatu repēsaliarum in ter
tia questione principali in vii. ad primi q̄rit.

Capitulum c. liii.

Secundo queritur quis compēre
re possit ad impediendam ut ihi
cantur: Solutio quilibet q̄
interest de testi. c. ventens de re
iudi. ca. cum super. Interest autem populi
contra q̄oz indicantur 1 habens mandati
ab eo 1 quilibet de populo admittetur sū
mandato quia cuiuslibet interest. ff. de ope.
nomi. ann. l. 1. p̄uociali. §. si. Admittē
tur etiam illi qui sunt de populo indicentia.
q̄ interest ne iniuste indicantur ut eodem
iure utantur contra eos. ff. q̄ quisq̄ iuris l.
rubro. 1 per totum iuray. In pondera q̄
dixit bar. in tractatu repēsaliarum in. lli. q̄.
p̄incipali in uerficulo. ad iii. queritur.

Capitulum c. lvi.

Tercio queritur que defēse com
petant illi contra quem petunt
Solutio. cōpetit exceptio q̄ pe
tens nō solum habeat ius peten
di uel ratione persone uel iure competentis l.
q̄ paratus est emendare ut. ca. dominus no
ster xxiii. q. ii. Sed an possit pecto fru
turi i huic iuri. Ecce eligitur rector ciuitat.
bononie qui iurat non petere repēsalas cō
tra ciuitatem niq̄uid obstat exceptio re
nūciacionis So. passus est propter iniquā
condemnationem tunc quasi in modum ap
pellationis recurritur ad iudicem proprium
in locum deficientis iurisdictionis. sed sic po
test appellacioni ut. l. si. C. de tempo. appel.

Sin autem passus sit iniurias tunc pacti
non operatur effectum q̄ remitteretur do
lus futurus ut. l. si anas. §. illud. ff. de pact.
1. l. conuenerit. ff. de pactis tota. Ponde
ra nō. per bar. in tractatu repēsaliarum in
lii. questione p̄icipali in vi. ad quartū q̄rit.

Capitulum c. lvi.

Quarto queritur qualiter consta
bit de iniusticia facta ut de ea ne
gata. Sol. per acta primi iudicio
uel per testes requiri pōt prim^o
iudex ut faciat copiam actorum 1 si non fa
ciat hoc est iniusticia facere ut. l. ii. C. ut lite
pen. Pondera nota. per bar. in tractatu f
pēsaliarum in lii. q. prin. in vi. ad gōti q̄rit.

Capitulum c. lyii.

Quinto queritur. an si aliqui ca
plantur uigore repēsaliarum de
tineri ualeāt ut ex primo an ex
secundo decreto. So. si idē
sunt repēsalie pte citata et comparante 1 la
ta fuerit super hoc sententia tunc ea detinē
tur ex cā iudi. ut. ff. de re iudi. l. a. di. pio. sin
aut si compareat tē pmo dabit finis ut capiat
ex primo decreto ut affectus tedio uēlat. Et
sic contumax pericrauerit tunc dabitur li
centia detinendi ex scōdo decreto. Pon
dera omnino ea que p̄dicātur a bar. in trac
tatu repēsaliarum in lii. questione p̄incipa
li in vi. ad sextum queritur.

Capitulum c. lyiii.

Estat uidere de forma exercēdi
repēsalas indicatas 1 circa hoc q̄
rendum est de plurib⁹. Et prius
an liceat illi cui sunt concessę
repēsalie auctoritate p̄p̄ia uel per ministros
concedentis cape homines contra quos indi
cantur. Solutio iaco. de bello tenet q̄ nō
licet auctoritate p̄p̄ia cape personas nec rei
sed indicaria ut. l. si milles. ff. de re iudi.
Supplēt quidam hoc verum si potest habe
ri copia indicatois auctoritate p̄p̄ia licet
ff. que in iur. credi. l. aut pastor. §. si tabulo
rem. C. de decuri. l. generali. Et hoc puto ne
ram ponderari eam debz motus facultatis
concessę 1 ille seruandus de rescrip. cum ol
lecta 1. l. diligenter. ff. mandati. Pōdera
nōta p bar. in tractatu repēsaliarum in nona
questionē p̄incipali in vii. ad p̄mū queritur

Capitulum c. lyviii.

Secundo queritur. An personas
captas 1 res teneantur capiens p̄
sentare iudici. An possit remanē
sibi. Sofo. iaco. de bel. tenet q̄
teneantur p̄tare iudici per. l. nō est singalis. ff.
de reg. iur. ne sunt illicitę exactiones ut. l.
illicitas. ff. de offi. p̄f. illi dicunt p̄tra
pcedere in personis captis que debent ad iu
dicem duci ut. l. generali. C. de decuri. 1 de
pace iura. fir. col. x. Res autem que capiē
ex causa iudicati uel ex primo uel ex secundo
decreto ut. d. tactum est remaneant penes
capientes ut. l. lo culas. §. qui legator. ff. ut
in pos. lega. Et per hoc non est necesse plas
ire ad iudicem. Nam sufficit prima confessio.

In his omnibus puto ponderandam formę
concessionis ut. d. p̄ime dixi. In pōdera
nō. per bar. in tractatu repēsaliarum in ix.
questionē p̄incipali in vii. ad scōm queritur
bar. in. l. generali. C. d. decuri. li. x.

Capitulum c. lx.

Tercio queritur. An 1 qualiter
res capte uigore repēsaliarum uen
dantur uel in solum accipiunt
uel estimantur. Sofo. Dicunt

quidam q̄ iudicio auctoritate uenduntur ut
l. miles. §. ii. ff. de iud. Extimatio fiet per
iudicem l. ii. C. de iure do. impetrā. 7 in cō-
putatione fiet deductio expēlarū. ff. ad l. fal.
l. in quantitate 7 l. scimus. §. in pputatione
C. de iure doli. Etia hīs etiam puto attendē-
dam formam concessiois. Pōdera ea que
predicantur a bar. in tractatu repelalarū in
mona q̄o principali in vñ. ad tertiū querē.

Capitulum c lxi.

Quarto queritur. An diebus feri-
tis possint iudice repelalle ex-
ecuti. Solutio. In dieb' feriatis
propter hominum necessitatem
possunt sicut executiones sententiarū ut .C.
ultimo de iud. Si autem de feriatis ob reue-
rentiam dei tunc dicant aliqui hoc fieri posse
in casu ne contigat de perire totam concessi-
onem. ut puta. si illi contra quos concedunt
sint 7 si ueniant nisi diebus feriatis allegant. l.
i. 7. ii. ff. de feriis. Hanc conclusionem si
credo ueram in hoc. s. membro. Nam capta
occasione repelalarum capiuntur. aut ex p-
mo aut ex secundo decreto. aut causa iudica-
ti ut supra deductum est. Et hec omnia inhi-
bentur tempore feriato. ut l. dies statim al-
legata. Etiam lex ponit specialiter in feriis
iudicis propter hominum necessitatem ut in
casibus illis procedi possit illis diebus ut l. i.
7. ii. ff. de feriis. De feriis autem iudicis
ob reuerentiam dei nil excipitur ergo statim
regule. In pondera ad ea que hic loquitur
propono meos nota. per bar. in tracta. repre-
saliarum in ix. q. principali in uñ. ad quar-
tum queritur bar. in autem. 7 ibeo. C. ne ux-
or pro marito in penult. col.

Capitulum c lxi.

Quinto queritur si quis male se v-
sendere vel res captas algore re-
pelalarum qualis cognitio adhibe-
atur. So. dicunt quidam q̄
si facta est executio plena de qua res uēditur
vel insolutum date tunc est opus ordinaria
cognitione nec auditur officium implorans
ut l. a dno pio. §. si post additū. ff. de fñdi.
Si autem non sit executio plene
soluta sed pendet tunc pōi officium iudicis.
implorare. per quod fiet edictio actorum. ul-
gore quoniam indicti sunt repelalle 7 poterit
opponere ad defectum iuris illius cui sunt cō-
cesse 7 habilitatem persone 7 ad alia de qui-
bus supra tacrum allegat l. iii. C. de eden. 7 l.
ii. C. ut lite pen. 7 l. i. ff. de eden. Et fiet sup
hoc summaria cognitio. Tunc conclusio
nem non credo ueram in hoc secundo mēbro
Nam si sint iudice repelalle parte citata 7
comparente 7 in iudicio persistente. tūc cla-
rum est q̄ dicta conclusio procedit q̄ ille ex

ceptiones ueniant proponendi a principio.
Nec opponi potest post sententiam ut l. per
emptorias. C. sententiam rescind. non posse 7
l. quidem. C. de except. 7 c. pastoralis extra
co. ti. Si autem in dicte sunt partes p cō-
tentionem absente ex primo 7 secundo decre-
to. Si iuste uenit secundum decretum vel e
quiualens secundo decreto ut lapsus anni in f-
ali. tunc idem q̄ non auditur nisi per uñ o-
dinariam. l. finita. §. si plures. ff. de dampno.
infec. Et i. contentancum quomodo 7 quan-
do iudex 7 ibi no. 7. c. cōtingit de do. 7 cō-
tu. In primo aut decreto procedere possit
Pōdera no. per bar. in tractatu repelali-
arum in ix. q. in v. ad quintū queritur.

Capitulum c lxi.

Hic membro adhibetur de reme-
diis exacti. Et circa hoc de pluri-
bus queritur Et primo queritur
An ex acto competat regressus
contra illum ppter cuius debitum vel delictum
exact. est. Iaco. de are tenet in l. ii. ff. v.
v. obli. q̄ ei succurritur contra illum ppter
cuius delictum seu debitum iudice sunt rep-
salle p. l. nō 7 fuus. ff. de neg. gest. ff. non. cau.
stabu. l. licet. §. si. ff. de bis qui de. vel effu. l.
et si do. §. cum autem Illi dicunt contra
per glossam. ff. de reg. iuris. l. si quis dolo. §. i.
Nam iste non est exactus ppter illi postū
ymmo ppter iudicem qui iusticiā denegauit
vel iniusticiam fecit. Dicunt ergo q̄ aut est
exactus iudex quia fecit iniusticiam 7 tūc
iudici nō succurritur ut dicta. l. si quis dolo
Aut est exactus iudex quia neglexit iusti-
ciam 7 tunc succurritur contra illum v̄ quo
requireretur iusticia ut. C. de exac. tribu. l.
missi. in fi. l. x. Aut est exactus tertius v̄
populo tunc pcedit opt. in de are. l. licet in fi
non. cau. stabu. 7 c. Pōdera ea que pcedi-
cantur a bar. in tractatu repelalarum in x.
questiōe principali in vñ. ad primū queritur
uide bar. in l. ii. §. si. ff. de v. obli. in v̄ bar. in
aut ut non sunt pignora bar. 7 ange. in l. nō
7 fuus. ff. de neg. gest. bal. in aut. 7 iō. C. ne
uxor p ma. ange. in l. si. ff. si fa. furtus fecisse
dicat uide bal. in dicta. l. ii. §. si. ff. de v. obli.

Capitulum c lxi.

Secundo subsequenter querit. An
exacto succurritur contra rec-
torem sicut contra debitorem
principalem ut supra dictum est.
Solo. Commendans est debitor principalis
7 si non est soluendo tunc rector cū ipse etia
debitos facit iusticiam de neg. do. q̄ hic credo
sit seruandus pbat. ff. de ma. cōt. l. i. in prin-
cipio de cōt. fñci. debi. l. quoniam. Ultimo per-
uenitur ad officiales qui cum possint impelles
rectorem ad iusticiam faciendam neglexerunt

ff. de ca. 1. ra. ff. l. l. §. nunc tractemus. Tu pondera ea que predicantur a bar. in tractatu repelaliar. in. x. qōe principali in. versu ad secundum queritur.

Capitulum c. lxx.

Ex quo queritur An captus uigore repelaliarum posset auctoritate propria homines illius civitatis capere in qua, captus fuit et videtur quod sic per totum titulum. quod quisque iuris ff. Contrarium est verum. nam titulus quod quisque iuris vendicat sibi locum in iuris executione ut si una civitas induxit repelalias iniuste contra aliam. Hoc idem licet alii contra primam. non autem loquitur in executione facti ut si spoliem te. liceat tibi spoliare me. quod sic permitteretur vindicta contra id quod non ff. ad l. aquil. l. sciam. §. qui cum alio. recurrit ergo ad civitatem suam et potest repelalias contra illam civitatem in qua captus fuit. Pondera ea que predicantur a bar. in tractatu repelaliarum in x. questione principali in. versu ad tertium queritur bar. in l. i. ff. quod quisque iuris ange. in l. i. ff. C. de navi. bal. in autem habita ne filius pro patre in pal.

Capitulum c. lxxi.

Clarior queritur. An per statuta repelalie concedi possint in casibus et non penalis a iure communis. Solus Civitas contra terras plebe subditas potest permittere. l. communis. Sed in terras liberas vel etiam confederatas de quibus loquitur l. non dubito. ff. de pact. non potest. Ratio. Nam in concessione repelaliarum utitur in causa cognita de iniusticia facta vel iusticia denegata. Et sic in hoc una civitas non potest statuere contra alias quia par in parem. 7c. So. vertitur. An haberi possit copia superioris denegantis iusticiam facere et de hoc nihil potest una civitas contra aliam statuere. Nam non potest statuere quod indicantur repelalie non requisiti superiore denegantis iusticiam. Nam hoc foret tollere iurisdictionem superioris de iure iurata. ut nientes. Tertio etiam queritur an superior indolentis et ipsa non recognoscens superiorem et illa cuius auctoritas regit. Et de hoc potest statuere civitas quod non requirit ea et quod unus pro debito alterius capatur. C. de ol. ego. c. ferto. l. i. l. i. x. sicut statuitur in casibus quod unus pro debito viri teneatur. C. qui. mos. p. l. a. cōgraba. l. latio et filius pro patre ut. C. repelali. l. i. l. i. xli. Ultio queritur an statuta civitatis quo conetur quod filius teneatur pro patre delinquente possit exerceri contra filiam existentem extra territorium civitatis concedentis. Sol. aut filius natus erat tempore delicti commissi a patre et tunc aut queritur unquid fieri possit executio statuti

contra filium alibi existentem et tunc potest ut. l. a. dino plo. §. penul. ff. de re iudi. 7c. l. cum unus. §. cum bis. ff. de bo. auc. iudi. pos.

An queritur unquid condici. ex lege ex illo statuto agi possit contra eum et potest. quod actio ipsam sequitur cui competit. C. de lon. temp. prescrip. l. i. ff. Hoc vera nisi filius ante delictum commissum contraxisset alibi domicilium vel inde foret ratione antiquae cognitionis quod tunc illa civitas ut preueniens possit illum defendere ab illo statuto. Si autem filius natus sit post commissam delictum. tunc non agitur contra illum. Nam statutum intelligitur de filiis ante habitis. ff. de mora. l. in delictis. §. si extraneus. ff. de mili. te. l. si iusticia. Item dico quod si statutum habet quod unus de una villa teneatur pro delicto alterius. Effectus de novo homo illius ville non teneatur pro delictis antiquis. C. de decur. l. p. videndum et no. dy. in l. i. incola. ff. ad mun.

Pondera no. sapienter per bar. in tractatu repelaliarum in prima questione principali in. versu ad tertium queritur et in. versu ad quartum queritur.

Capitulum c. lxxii.

Ex quo queritur. An per pactum possit fieri licite ut unus teneatur pro alio. So. Per pactum prima totum expensum non ut non sit pignoratium si pacificatur quod exigitur alius in quo habet ius ut. C. ne filius pro patre p. totis. Et licet hoc non posset dominus iudex tamen dñi poterit facere vel capi homines sic condictionatos. Pondera ea que predicantur a bar. in tractatu repelaliarum in prima questione principali in. versu ad quintum queritur. 7c. Et de materia repelaliarum pondera que no. bar. in dicto tractatu et bal. in mit. 7c. l. i. C. ne ut or. p. marito. Et ia. de delicto in mit. ut non si aut pignora. Et io. an. in regula non debet de regalis iuris. li. vi. Et doc. in. c. l. de in iuribus li. vi. Et post lectionem domini pami mei dñi An dominus possit concedere repelalias contra universitatem sibi subditam prestatum responsum quod non. Nam si potest iure ordinario coercere talem universitatem cessat remedium extraordinarium. l. in p. uinciali. §. l. ff. de operis nomi. nuncia. per bar. in. l. admonendi. ff. de iure iuran. in. vi. nemo. 7c. l. in causa. ff. de mino. cum sy. maxime cum extraordinarius est contra ius commune. Nam quod potest concurrere cum ordinario fm glo. in l. i. §. unde querit ff. de publicanis. Et concessio repelaliarum alio iure concedit in subditis ut. d. p. clausas p. dñs p. amam mei ergo non poterit nostro casu repelaliarum fieri concessio. Et in hac opt. ad est bar. in l. i. §. habet itaq. ff. si quis te liber esse iussus fuit. Ex istis nascitur non in iussu illacio quod civitas non potest concedere repelalias propter factum sui subditi quod potest

hinc ordinario coherere.

De Duello.

Capitulum c lxxii.

EST ENIM.

videre de duello in cuius tractatu primo queritur. Quid sit duellum. Secundo quot sint species duelli. Tertio quo iure sit punitus duellum. Et quo inhibetur. Quarto propter quod sit permittus et propter quid inhibetur. Quinto pro quibus causis licitum sit duellum. Sexto inter quos sit licitum. Septimo quare duellum sit.

Capitulum c lxx.

Quid sit duellum.

Ita primum dico quod duellum est pugna corporalis deliberata hinc inde duorum ad purificationem gloriæ vel odii exaggerationem.

Dixi pugna. Hoc ponitur ut genus. Dixi de libera hinc inde. Hoc ponit ad differentias pugne que sit ad necessitatem sui defensionem ut. l. ut nō. ff. de iusti. et iure. l. i. c. unde ut. l. i. §. nūm. ut. ff. de ul. et arma. l. scilicet §. qui cum alr. ff. ad l. aquil. c. olim et restit. spolia. et c. si furiosus de homici. Nam pugna illa si est deliberatio ex parte aggressi regit. sed ex parte agredientis bene. vel neutrius. ut probatur in dictis c. si furiosus. In duello autem utriusque deliberatio. Dixi duorum quod tunc proprie duellum. Et idem duellum nuncupatur ad herendo et hinc inde vocabuli iustitiam de dona. §. est et aliud xvi. q. i. si capis xxi. di. citros de poeben. cum si. Et dixi pugna duorum ad differentiam tractatus qui inter duos celebratur ex mutuo periculi concessa ut iust. de obli. cum rubrica sequentibus. Et dixi corporalis ad differentiam pugne iudicialis que sit etiam inter duos ut pote ut actor et reus ut. l. rem non novum. §. patroni et l. propterandum. C. de iudi. et c. fort. de verbo. sig. Nam ibi non contenditur viribus corporis sed iuribus. ut iuribus statim allegatis. Dixi ad purificationem gloriæ vel odii exaggerationem. Nam per hoc tangitur finis et eliciuntur species duelli ut. j. lequit. Concluditur igitur de descriptione duelli in genere ut supra dictum est. Tu pondera quod dominus proventus meus egregie quid sit duellum diffinit secundum ray. de pena forti dicebat quod duellum proprie est singularis pugna inter aliquos ad probationem veritatis. vide bal. i. ca. i. de pace tenē. in viii. col. melius est dicere inter duos quod inter aliquos. quod proprie duellum est duorum secundum ang. in l. militis. C. de testō militi.

Capitulum c lxx.

Qualiter duellum sumatur et quot plex sit duellum.

Ita secundum est advertendum quod duellum ut supra describitur sumatur generaliter ut tetigi in fine descriptionis. Species duelli eliciuntur per verba posita in fine. Nam tres sunt species duelli. sit enim duellum propter odii exaggerationem aut propter gloriæ impudicam consequendam ex viribus corporis. Et ut propter purificationem alicuius criminis intincti. Propter igitur odii exaggerationem sit tamen aliqui dolo odio vel gloriæ naturali et naturaliter singulari que apud naturales forma specifica appellatur in ducentur se invicem exterminandos. Et de hoc duello non repio aliquid iure canonico sed ex principiis naturalibus hoc evenit ut statim prosequor et quia sensuali experientia hoc est comprobatur. sit secundo propter gloriæ in publico consequendam ut in publicis spectaculis cum duo vires corporis variis modis expleantur. De hac reperio iure canonico et civili et canonico lege civili. ff. ad l. aquilias. l. qua actione. §. si quis in collatione et l. unica C. de gladiatores. li. xi. de re iusti. l. 2. modis ff. de his qui non in se. l. athletis. l. i. c. que res plex. ob. pos. l. specie non gloriæ. de heredi que ab intel. de. §. inter dum. Lege canonica declaratur licet id fiat etiam propter purificationem de torneamentis per totum licet non sit proprie duellum sed pueracium ut. l. qua actione. §. si quis in collatione. §. allegata. sit et tertio propter purificationem. si cui aliquod crimen alicui imponitur et ad probationem commocione forte carens aliis probationibus vel etiam non carens offert se probatur in viribus corporis duello suscepto et provocatus sit se purgat ut etiam habetur in re canonica de pugna in duellione ut. §. allui et. ii. q. v. quali per totam illam questionem et in lombard. ut. j. proquor cum illud membrum discipletur. Tu pondera ea que dixi ut bal. in l. ex hoc iure. ff. de iusti. et iure in §. octavo quare vis bal. in rubrica de edictis libertate tollē. in si. per bal. in c. l. de pace tenen. ubi dixit etiam quod tortura si permittitur nisi precedentibus iudiciis. Ita nec duellum videtur ubi ubi. post hoc. in c. i. in. de clericis pugnantes in duello vide ubi ante. in c. l. de corpo. micia.

Quo iure sit introductum duellum.

Capitulum c lxxi.

Ita tertium videlicet quo iure sit introductum duellum. Expedit singulas species duelli. §. posita explicare declarando.

circa singulas quo iure interducitur et quo iura inhibentur. Et primo de duello promerente propter odii naturalis ex ageratiois ubi sciendum quod hoc duellum est introductum iure naturali. Et sumitur ius naturale pro distincta nature proveniente ex sensualitate ad aliquid appetendum ut sumitur ius naturale pro instinctu nature proveniente ex rationabili intelligentia que comparatur naturali equitate. Et est tertius modus iuris civilis ut dicto casus naturalis. Est etiam inhibitorium iure naturali continente precepta moralis legis divine ut sumitur quarto modo ut casus statim allegato. Est etiam inhibitorium hoc duellum iure politico scilicet canonico et civili. Expedi enim quod per singula demonstratur. Dicitur quod hoc duellum est introductum iure naturali ut sumitur pro instinctu nature proveniente ex sensualitate ad aliquid appetendum hoc sic demonstratur. Quicquid est productum cause in mediate aliquas effectus per consequens est productum illius effectus. Sed istud ius naturale originaliter inclinat ad sic appetendum est causa inductiva bulas sensuales appetitus ad duellum ergo est causa duelli inductiva probatur maiore nam in primis sufficienter in causam cause productivae sic remote imprimat effectum. ff. ad l. in li. de sic. l. nihil. C. eo. ti. li. quis vocandi. l. di. student et ca. si quis videtur de homici. de cetero in ca. prebiter. Probatur minores Nam ex naturali dispositione proveniente a principis naturalibus et superioribus et inferioribus provenit in hominibus varia appetitus inclinatio. Nam circumscripto quolibet merito vel de merito tibi naturaliter placebit quod tibi displicet et contra ex naturali dispositione quis circumscripto accidentali quocumque diligit et odit. quilibet hoc experiri potest in seipso. Sed causa huius est propterea attentis corporibus celestibus. Nam si aliqui tempore natalium in momento natali habeant uniformem correspondentiam configurationem celestis et principis paternae confirmant in completionibus procul dubio sit amicitiam naturaliter. sic se repugnantes hic inde sunt inimici. Nam ab uniformitate debet inferre uniformis effectus ut. C. ad l. fal. l. ut. ma. ff. ad l. aquil. l. illud. Et tamen est hic attendendum quod hoc inimicitia naturalis inter hominem et hominem ut pediculi provenit ex singulari naturali dispositione. que forma specifica apud naturales incipitur. nam attentione naturali dispositione speciei humane inter homines debet esse amicitia propter uniformitatem complexione relate ad formam humanam. Et propterea dicitur iura quod inter boves et homines est officium humanitatis hinc inde attendendum ut l. si servus in ff. de serv. ex pos. et officio. ff. de neg. gest. et ibi glo. Et non infertur hoc ex naturali dispositione speciei quod hoc naturaliter non est reperire si quis se

carret per species singulas statim. Nam inter species singulas bonorum est quodam sed quicquid natus et cohabitatio propter uniformitatem complexione relate ad formam specificam. Sed inter speciem et speciem quandoque est extremus repugnante introductum ad alterius extirpationem ut est in encipite et aubus aucupabilibus murilegis et muris canibus et leporibus et de singulis provenit ergo ex quadam repugnante individuali dispositione principiorum superiorum et inferiorum effectum ut quilibet in se experit illa tamen dispositio non inducit regulam in mediate duellum sed per medios actus ad quos propter proveniunt. Sed tamen credo quod tanta posset esse repugnancia individualis dispositionis quod subito ad id provenirent et hoc provenit cum regantur sola sensualitate et nullo rationis liberamine. Ex his apparet conclusum quod licet hoc duellum introductum est iure nunc sic sumpto.

Capitulum c. lxvii.

Estat videre quod dicebas secundum circa hoc membrum dicebas enim quod hoc erat inhibitorium iure naturali sumpto per rationalem intelligentiam et sic iure gentium et iure naturali pro ut continent precepta moralis legis divine et iure canonico et civili hoc facit clarum tam ostenditur potest incipiendo a lege divina. Nam hoc est unum de preceptis decalogi. non occides. Et sic lege divina inhibitorium et hoc regale preceptum et sic dei instantia de precepto. qui occidit filium nec tamen non peccavit in lege divina. Judicium. xvi. c. xxiii. q. v. si non ly.

Non obstat quod hoc facta fuerit ipsa acti in ductione ut scribit Augustinus in li. i. de civitate dei transumptive habet in. c. si non licet. xxv. q. v. Sic ergo lege divina inhibitorium est per illud preceptum. Non occides. Deuter. v. cap. Est etiam inhibitorium lege canonica de homici. volunt. per totum. l. di. quasi per totum. xxii. q. v. Si non licet. Est etiam inhibitorium iure civili. ff. ad l. cor. de sicca. et C. per totum.

Et si dicas illa iura inhibent homicidium voluntarium. Et sic hoc genus duelli ex quo illud provenit. Si homicidium proveniens a duello introducto ex naturali dispositione si est voluntarium ex quo naturaliter est introductum. Ergo illa iura si astringunt hunc casum solo est pempta. Nam licet naturalis dispositio corporis hoc introducit cum naturalis intelligentie dic tamen disponit contrarium cui obtemperandum est. Nam illa naturalis dispositio non necessitat ymmo manet liberum arbitrium. xxiii. q. liii. de tirilla. et Nebuchodonosor et c. sicut enim de pe. di. li. et phis in ethica. Ymmo et Astrologi hoc efficientes demonstrantes hoc idem ostendit unde inquit barth. in tractuloquo in verbo decimo. Minime sapiens dominatur astris. Dic ergo licet dispositio corporis proveniat a naturali

principio tamē nālis intelligētia mouet et in contrariam disponit. Dicitur possit de singulis generibus uiciorum moralium. Nam naturaliter singuli homines ad singula inclinantur uicia ut quidam superbi. Quidam luxuriosi. Quidam auari et sic de singulis. Nec tamē excusantur quia peccata necessitantur ut. c. nabu chodonosor xxiii. q. iiii. Hinc est quod dicit philosophus tertio de anima tracta de motu quod inter appetitum sensitivum et intellectum est quandoque repugnantia. Nam sensus tendit in unum intellectualis in aliud. Et si intellectus vincat sensum motus est rationalis et naturalis. sic si spera superior mouet inferiorem. Si autem e contra fiat est motus contra naturam. Et si spera inferior moueat superiorem licet enim motus sensus perueniat a natura inclinando in uicium tamen sit contra naturam nisi obtemperet sensus intellectui ut subditus domino suo et idem philosophus primo poli.

Est etiam hoc genus duelli inhibitum iure naturali et sumitur pro naturali intelligētia idem est quod ius gentium. hoc probatur sic. nā ex naturali intelligentia insurgit communis et naturalis equitas disponens in cōseruationem uniuersi et inde habuit ortum ius positum ymmo et uerius loquar fuit ipsa met equitas iure naturalis aliquo addito uel de creto ut. l. ius civile. ff. de iust. et iur. Cum ergo naturalis equitas tendit in cōseruationem uniuersi ergo reprobat hominis extinctionem que est tendens ad mundi destructionem. Nam quedam quorundam hominum extinctiones tendunt ad mundi cōseruationem ut puta cum mali ex terminantur. Nam propter hoc interest reipublice ut puniantur ff. de publi. l. lictatio. ff. l. aquil. l. ita uulneratus in l. ff. de fideiuss. l. si arce de sentē. exco. ca. ut fume. Ex his aparte concluditur quod licet hoc genus duelli et inhibitum iure diuino nec iure canonico et civili.

Capitulum c lxxiii.

De duello quod sit per gloriam quo iure sit introductum. et quo iure sit inhibitum.

Est uidendum de duello quod sit propter gloriam uictorie quod in publico spectaculo quo iure introductum est et quo inhibitum. Et dico quod genus duelli est introductum iure naturali ut sumitur in suo significato scilicet pro instinctu nature promouente ex sensuali tate. Sed est inhibitum iure naturali sumpto pro iuregen. et iure diuino. Est etiam inhibitum iure canonico et iure civili modificatio ne tamē ut statim subiciam. Declaramus singula ut dixi. Dixi quod erat introductum iure naturali sumpto i scō suo significato hoc probat ut dictum ē. s. p. mo mēto. Nā sensuali inclinatio pueniens a principis naturae albus. In

ducit ad experientiam uisum corporali solum consequendam ergo inducit hoc genus duelli inde pueniens cum pducens causam pducit effectum ut iuribus statim allegatis in sapiori membro. Hoc tamen genus duelli est minus detestabile primo genere attento utriusque. Nam primum genus duelli sit propter extinctionem finaliter occasione inimicitie naturalis manentis Hoc autē nō sit necessario ad extinguendum sed uincendum quod contingere potest sine extinctione ergo hoc minus detestabile tamen actus homini testatur et distinguuntur propter fines intentos. ff. de furtis. l. uerum et. l. qui iniurie et. l. qui ea mente xv. q. i. et. l. c. l. xiii. q. v. quicquid de sentent. exco. cum uoluntate. Hinc est quod inquit philosophus. iiii. ethicorum qui fornicatur cum muliere ut pecuniam inde trahat non mecha sed auarus. Si igitur sine ponderato hoc minus testabile est illo. Confirmatur. Primum genus insurgit ex odio quod in se detestabile est si sine causa rationali pueniat ut in p. Et hoc genus duelli sine odio puenit. Nam et naturales amici duellabant in spectaculo ad finem glorie consequende. Confirmatur Illud est minus detestabile quod minus distat a naturali equitate scilicet hoc secundum genus duelli minus distat a naturali equitate ergo probatur maior. Nam detestatio et approbatio actuum puenit a naturali equitate super qua fundantur inhibiciones et permissiones iuris ut. l. ius civile. ff. de iust. et iur. et. l. c. naturale Prima distinctio. minor. Nam hoc duellum non distat ab equitate iuris naturalis nisi quia ex illo sequi posset hominis occisio qui actus tendit in destructionem uniuersi super qua equitate fundatur inhibicio leg. noue ciuili ut. l. kuma. C. de gladiis. li. xi. Cum tamen. l. ueteri non esset facta inhibicio quia sic le occidentibus remittebantur actiones ut. l. qua actōe. §. si quis in collatione. ff. ad. l. acquil. Sed primum genus distat a naturali equitate. Primo quia tendit ad necessariam alterius uel utriusque examinationem uel extinctionem. Distat etiam quia in fomite odii quod naturalis equitas abhorret si sine causa insurgat ergo hoc detestabilius. Confirmatur. Illud est detestabilius quod in totum nocet. Sed primum genus in totum nocet et in nullo prodest Hoc autem secundum partem prodest. Maior clara. Nam actus de nominantur laudabiles et uituperabiles ratione laudabilitatis sive et uituperabilitatis tunc finis in talibus ponderetur. ff. de ritu nupt. l. si quis in senatorio. ff. de iure fisci. l. non intelligitur. §. si quis palam. ff. de iust. lege cō furiosos. Minor probatur. Nam primum genus sit solum propter examinationem matrem hoc nocet. secundum autem sit in publico spectaculo propter leticiam et recreationem populi. et ob hoc ludus permittuntur et spectra. C. de specu. et lerna. et lerno. per totum tlexcepta. l. si. l. x. et. l. c. ex p. ludorum. l.

una est. greca constitutio. Ex his inferat
hoc genus duelli introductum iure naturali
sumpto iuriscundo suo significato et ipsum for
minus et detestabile primo genere.

Capitulum c lxxiii.

Quo iure duellum per gloriam
sit inhibendum.

Estat videre quo iure hoc genus
duelli est inhibendum. Et dicendum
ipsum inhiberi iure diuino iure gen.
iure positivo canonico vs et civil
li. Quod etiam iure diuino sit inhibendum
probatum. nam cum aliquo aliquo iure inhi
betur etiam omne id per quod peruenitur ad
illud. Sed iure diuino inhibetur homicidium
ad quod peruenitur per hoc genus duelli pro
batur maior per. Locatio. ff. de spo. ff. de fide.
iust. l. cum. l. c. de usuria. l. eos in ff. de u.
saris vel in. l. si. in ff. de heredi. pe. l. si et si
lege. §. Item ueniunt. ff. de mili. re. l. prima
§. ut supra. Ad hoc probatur de iro. c. viii.
non occides. Quod autem per hoc genus du
elli peruenitur ad homicidium luce clarius est.
Confirmatur ille actus iure diuino inhibitus
qui est alienus a fonte caritatis. Sed hoc ge
nus duellandi est huiusmodi ergo. Probatur
maior. Nam caritas est fundamentum omni
um virtutum et exclusio viciorum de pe. di. ii.
caritas est et c. ergo et quasi per totam primam
partem illius distinctionis et sic alienum a ca
ritate sapit naturam peccati. Et sic inhiberi
iure diuino. Probatur minor. Nam caritas est
delectatio dei et proximi ut. c. caritas statim
allegato. Et delectio proximi sicut suspensio in
ca. proximorum de pe. di. ii. Sed duellum est spec
taculo duellat ut vincat proximum. Et sic si
diligat ergo inhibetur iure diuino. De
ceterum etiam quod erat inhibendum iure gentium
qui est tendens ad destructionem uniuersi.
hoc genus duellandi est huiusmodi. ergo ma
ior probatur. Nam equitas naturalis super qua
fundatur hoc genus tendit in conseruationem
et augmentum uniuersi de iusti. et iure
li. §. ius naturale et l. ex hoc iure co. ti. ff.
Probatur maior. Nam hoc genus duellandi
tendit in destructionem et extinctionem ho
minis qui est nobilissima pars uniuersi. ymmo
est finis productorum. ff. de usuria. l. in pecc.
dum. ergo inhibetur iure gentium. Confirma
tur ille actus est inhibitus iure gentium qui
est repugnans preceptis naturalis equitatis
que est ipsum hoc genus uel eius fundamentum
hoc genus duellandi est huiusmodi ergo ma
ior probatur. Nam omne illud est iure genti
um inhibendum contrarium cuius est preceptum
ei contrarium eadem sit disciplina. ff. de iur. i.
de iur. l. i. iusti. co. ti. l. precepto xxi. di. bo
spiciendum. Probatur minor nam hoc est uni
de preceptis iurisperitum quod quis non loca

pletur cum aliena lectura ut. l. nam natura.
ff. de condi. inde. et regula locupletari de re
gul. iur. li. vi. Hoc etiam est unus precep
tum iurisperitum quod tibi non vis fieri alie
ri non facias ut in principio decretorum. Et
hoc genus duellandi repugnat utriusque pre
cepto ergo. Nam primo precepto repugnat i hoc
Nam duellum querit gloriam de uituperio lo
ci proximi. et tamen tibi hoc fieri nolis. ergo
inhibetur iure gentium. Confirmatur ille ac
tus est inhibitus iure gentium quod est species
belli in iusti. hoc genus duellandi est hoc mo
di ergo probatur maior. nam bellum iustum lo
cum introductum est iure gen. ut. l. ex hoc in
re. ff. de iusti. et iure et l. hostes. ff. de capti.
et postliminio reseruo. Ad hoc patet nam
hoc non est inductum auctoritate principis
nec propter necessariam defensionem ergo.

Ex his inferatur hoc genus duellandi inhi
bitum iure gentium. Sed statim predictis
opponitur sic. hoc genus duellandi sit pro
pter experientiam fortitudinis que fortitudo
est uirtus moralis ymmo cardinalis. Sed
uirtutes morales nec earum exercitia sunt i
bita iure gentium ergo non procedunt statim
allegata. Quod autem hic sit actus iure for
titudinis que est uirtus moralis. nam in hoc
genere duellandi sit expectatio aggressus.
Solutio pro eadem habet contrarium est ac
tendendum quod reperitur fortitudo uera que
est uirtus moralis et cardinalis. et illa nec est
operationes sunt inhibita iure gen. Sunt etiam
fortitudines similitudinarie de quibus prius
in ethicis tractatum de fortitudine que simili
tudinarie precipit accipit aggressi et expe
ctandi sunt quinque. Nam alii aggressi propter
timorem qui fugientes de bello peruntur.
Quidam aggressi propter experientiam
artis bellandi ut stipe duri et isti ut facilius
aggressi sic facilius fugiant ut inquit
prius ubi. Quidam aggressi propter iram
non deliberantes periculum. Quidam aggre
diantur propter spem non credentes habere
periculum. Quidam aggressi propter glori
am mandati consequendam quia fortes laudari
solent timidi autem uituperari. Iste sunt
quinque fortitudines similitudinarie ad ueram
fortitudinem que est uera uirtus moralis et car
dinalis existit. Ad hoc autem quod sit uera
fortitudo requiritur hec conditio uidelicet
quod operetur scienter quis. Nam opus igno
rati si est opus uirtutis non praeferat debet regula
re omne opus uirtutis. Secundo requiritur quod dignus
Tercio requiritur quod dignus propter hoc. l. pro
pter bonitatem et honestatem operis in se non
autem propter aliquod extrinsecum. Quarto
requiritur quod operetur firmiter et delectabili
ter omnes similitudinarie de quibus supra. Et
sic secundum prius et minus a uera omnes tunc
deficiunt in hoc quia operantes secundum il
lum non operantur propter se. i. propter boni
tatem et honestatem operis. Sic in proposito

Nam dicitur equas iuri gentium delinquentes puniri innocentes absolui ac in hoc bello contingit quidam contra ergo inhibiti iure gentium. Etiam repugnat illi precepto quod tibi finis in principio decretorum. Dixi ipsam inhibitionem iure canonico hoc claret de pur. val. per totum de depugna. l. duello per ii. q. v. ca. confulisti usque ad finem questionis et orationes possent reddi que redditae sunt ad probandum quod sit inhibiti iure divino cum ius canonicum imitetur inhibitiones et permissiones legis divine. Confirmatur et per hoc probatur etiam quod iure divino sit inhibiti. Nam actus ille est inhibitus iure positivo per quem sit exclusio observantiae iuris positivum hoc duellum est huiusmodi ergo probatur maior. Nam si observantia est mandata a lege positivum ergo observantia exclusio est inhibita. ut sicut propositum in proposito sic oppositum. ff. de his qui sui sunt alii. l. i. ff. de eo. in prin. xii. di. hospiculi. Probat minor. nam iure positivum introducte sunt actiones tam civiles quam criminales et tota forma iudicialis per quam proceditur ad iura pertinet declaranda ut. l. proferenda autem. offeratur et. l. una. C. de lit. contel. et. l. prolati C. de senten. et. ca. contra de proba. et unde cuius reddatur quod sui xii. q. ii. cum de officio sumi et. l. iusticia. ff. de iusti. i. iure et. l. iusticia in iusti. co. ti. Sed duellando hoc observantia penitus excluditur ergo duellum est iure positivo inhibendum. Confirmatur ille actus est iure positivo inhibitus per quem portiones iusticia denegatur et eiusdem iniuria irrogatur Sed hoc duellum est huiusmodi ergo probatur maior quod ad hunc finem promulgata sunt iura positiva divinitas per omnia principia ut. l. ult. C. de longi. tempo. prescrip. viii. di. quo iure xvi. q. i. placuit. Probat minor nam hoc duellum aliquando contingit innocentem succumbere in duello et sic sibi in iuriam irrogari et aliquando contingit nocente obtinere et sic non sit iusticia provocati. Ex his inferitur hoc genus duelli quod sit per purgationem criminis in periculis fore inhibendum iure positivo canonico indistincte civili regulariter.

Dixi etiam regulariter iure civili inhibendum hoc duellum scilicet tamen in duobus casibus per. l. federici de pace tenenda et eius violatoribus ut puta si quis intra tempora pacis hominem occiderit et constet de homicidio puniri pena capitali ut fractos pacis nisi si per duellum probare voluerit quod hoc fecit defendendo fecit et est ille specialis casus quo duellum est in rei optione. Alter casus si intra tempora pacis vulneraverit pauperem nisi per duellum probare voluerit quod hoc fecerit defendendo. Tunc duo casus habenter de pace tenenda et eius violatoribus. lege una.

Primus in. §. si quis hominem infra pacem. Secundus in. §. si quis alium in eadem. l. In aliis autem casibus permittitur iure lombardorum ut. j. plequer. Ex his concluditur

tercium principale membrum huius tractatus scilicet quo iure sit duellum introductum et quo iure inhibendum distinguendo singulas species duelli.

Per predicta ergo patet explicatio quarti membri videlicet propter quid inhibiti sit et propter quid permittitur. Nam duellum permittitur omni iure est inhibendum et nullo permittitur et propter quid. §. apparuit. Si de secundo et si de tertio singula tacta singulis membris ad hoc propositum reducendo. Turpondera quia per primum membra tangit late hic cum capitulis precedentibus quo iure introductum sit duellum quo iure prohibendum quo iure permittitur. vide aliquid per bal. in. c. de pace tenenda in viii. col. bal. in rubrica de editicia libertate tollen. in si. ubi. dixit quod legibus regulariter bellum est odiosum et. et. l. i. C. de gladiatombus li. xi. vide glo. in. l. cum filius. §. si. ff. de le. ii. Ange. in si. de libertatis. §. si. in si. vide bar. in. l. qua actione. §. si quis. ff. ad. l. aquilam vide bal. in. l. ex hoc iure. ff. de iusti. et iure. Et quod sit prohibita vide. d. abb. in. c. ii. de cti. pug. in duello. Et ibi subdit quod ista duella fuerunt inventa diabolo seducte. Idem dixit in. c. i. eo. ti. in si. unde dixit abb. in. c. i. de purga. vulgari quod per ista duella deus non temptari ideo prohibita et in. c. ii. eo. ti. in. li. col. et. d. abb. in. c. iii. eo. ti. vide. d. abb. post doc. in. c. i. de torneamentis et quod non sit licitum immo prohibita vide sanctum thomam scilicet scilicet. q. xxv. vide. d. Card. in cle. pastoralis de re iudi in v. q. vide senge in c. nega. iohannis. xii. que incipit quia in futuro ubi concludit quod duellum est prohibendum et has conclusiones in hoc subiecto iuri canonico vide. c. monachum. ii. q. v. et que ibi predicantur.

Capitulum c. lxxvi.

In quibus casibus purgatorium duellum permittatur.

Inter quatuor principale videlicet in quibus casibus permittitur duellum est videndum de prima specie videtur est quod nullo casu si scilicet specie dictam est quod de tertia specie nunc videndum cum illa iura lombardorum pluribus casibus permittat et soli circa tertiam speciem insistendum usque ad finem tractat. Quare dicitur est igitur quibus casibus hoc duellum permittatur. ultra duos supra nominatos qui habetur in. l. federici de pace tenenda et eius violatoribus. So. permittitur duellum in crimine lese maiestatis cum quis alius impetit super illo crimine ut in lombardis de publicis crim. l. si quis et est ultima. Sit secundo cum dicitur uxorem consiliatam in mortem viri ut in lombardis de scilicet mortis. l. si mulier et est ultima. Sit tertio propter iuriam conturbatio commissa ut si quis aliquem vocaverit conturbatum ut in lombardis de conviciis. l. si quis Aliquid sit et quarto casu de homicidio commisso iter

trecentum ut in lombard. de homicid. l. i. lib. b5
 sit quinto in crimine pericidii 7 si dicat
 commissum propter cupiditatem honorum ip
 sius ut in lombard. de pericidii. l. i. sit sex
 to pugna de furto a sermo commissio qui est in
 fuga si dominus nescit negare seruum fecisse
 furtum ut in lombard. de furtis. l. i. si quis

Et dicant quidam qd fuit hec. l. conuice
 fama secundum quosdam. i. iniquitatis. vide
 licet qd dominus tenetur pugnare pro suo.

Sit septimo in crimine adulterii ut si quis
 accusetur adulterasse uxorem alterius in lom
 bard. de adulterio. l. iii. sit octavo si qd dicat
 aliqui mulierem adulteratam 7 sic probare
 velit ut in lombard. de iniuriis mulierum. l. ii.
 incipit de iniuriis mulierum. l. puellam.

Item sit nono pugna si quis conveniat qd ma
 lo ordine rem mobilem sine immobilem posside
 at xxx. an. ut in lombard. de pscriptis. l. si quis
 alium ut. l. ii. sit decimo inter cōtrarios
 testes ut in lombard. de testibus si quis cu al
 tero quod procedit si productatur ab utroq
 parte. Sin autem ab eadem pte tunc non
 fit duellum. Nam aut actor probat 7 cōdēp
 natur. Aut nihil probat 7 absoluitur reus.

Sed si ab utroq pte producantur 7 cetera
 sint paria tunc fit duellum. sit undecimo
 propter debitum paternum contra filium ne
 gantem ut in lombard. qualiter quis se defen
 dat. l. ii. si quis post mortem. Et necne intellec
 tus illius. l. est qd intelligatur debitor ex ma
 leficio. sit duodecimo propter incendium
 si agatur cōtra malefactorē ut in lombard. qua
 liter quis se defen. l. si quis alius. Non autem
 sic si agatur contra consultorem ut in lombard
 de illi consilii. l. una in fi. sit tredecimo
 pro adulterio ut si maritus dicat uxore suam
 adulteratā esse ut in lombard. qualiter quis se
 defen. x. l. si quis uxore. sit decimo qrtio
 si maritus suspicietur qd qd turpiter se habu
 erit cū uxore. Et intelligit lex turpiter tūgē
 do ut in lombard. qualiter quis se defendat x
 si quis a mō. sit quinto decimo pro per in
 rio ut in lombard. qualiter quis se defen. l. de
 furto. sit decimo sexto etiam duellum p i
 nstituta ut si quis dicat se primo inuictus
 7 de possessione eiectionem 7 alicuius idem di
 cat ut l. idem de iustitia

Sit decimo septimo pro deposito negato.
 ut si depositū sit ultra solidos xx. ut. l. si qd
 pro se. sit decimo octavo si dicatur qd qd
 carta per uim extorsit ut. l. si quis dixerit i
 lōbar. qūter quis se defen. x. sit decio no.
 p libertate petita a suo. l. si qd fuit. Quidē
 dicit qd illa. l. fuit cantualcosiana. Tu pōdera
 qd dñs patus me? hic loquitur multū sapiēter
 7 hoc tāgit bal. in ti. de pace tenēda i ca. l. i
 vii. col. ci se aliqd p bal. c. de editi. lib. tol.
 in fi. vide bal. in l. negūtea. C. de act. 7 obli.
 inocen. in ca. cā oim de restit. spol.

Inter quos iniuri debeat duellum.

Capitulum c. lxxviii.

Ita sextum principale uidelicet
 inter quos iniuri possit duellū est
 uidendum qualiter duellū purga
 torium inter principales regu
 fieri debeat. Et dico qd hoc habet regula tēto
 ture lombardo quo duellum pmittit in casib
 sapiens narratis qd duellum sit inter principa
 les. Sed illa regula fallit in octo casibus. Pri
 mus si iuuenilis etas impedit. Secūdū si etas
 decrepita. Nam in ea labor 7 dolor. Terti
 us si infirmitas aliquis duellare pbebat. Iste
 tres casus habentur in lombarda qualiter qd
 se defen. x. l. quacūq lege 7 de piciō. l. ultia
 Quartus est si fuus qui est in quali possesioe
 fuitatis pclamat in libertatem. Nam tūc
 dominus duellat p campionem ut in lombard.
 qualiter quis se defen. l. si quis fuus ppter ap
 petitum. Quintus si ecclesiastica sit psona
 puta clericus uel comes causas habent ad in
 uicem uel cum aliis tunc pugnant p campio
 nem ut in lombard. qualiter quis se defen. l. fi.

Sextus ubi mulier accusetur d adulterio
 ut in lombard. c. ti. l. si quis uxorem. Sep
 timus si testes actoris sunt contrarii testib
 rei tunc testes actoris debent assumere unū
 campione 7 testes rei assumere aliu ex testi
 bus met ut in lombard. c. ti. l. si quis cum altero

Octauus Si seruus accusatur de furto in
 lombard. de fur. l. si fuus dominum de furto
 hodie tamen de consuetudine pmittitur qū
 bet habere Campionem.

Capitulum c. lxxviii.

Qualiter fiat duellum.

Ita septimum principale scilicet
 qualiter fiat duellum est uidēdi
 7 sic premitto qd duellum est re
 ductum ad instar iudicii contē
 tiosi. Nam sicut in iudicio contentioso sit
 actor 7 reus index infra causam instruen
 tia p que largo modo sumpta p quibuscūq
 causam instruentibus ut. l. l. ff. de fide infra.
 sit ueritatis declaratio ut feratur diffinitiva
 sententia. Sic in duello sunt actor 7 reus.
 ntpuata puocans 7 puocatus. index infra ut
 pote arma quibus se inuicem pcutiūt. Tūc
 sicut in iudicio contentioso quis aliquando
 conuincit testibus scripturis 7 confessionib
 ut de resti. spo. c. cum ad sedem. Sic in duel
 lo quis aliquando armis conuincit corporali
 bus ut sicut in primo sit qd sic cōuictus 7 in
 casu condemnationis sic a simili conuictus
 in hoc. Ad similitudinem igitur iudicii cō
 tentiosi querendum est de hoc iudicio. l. duell
 lari. Pondera in simili ea que dicit bar. in
 l. l. C. de lit. contesta. in. ii. col.

Capitulum cxxxix.

An iuramentum de astu inter duellantes sit prestandum et per quem.

Primo quero An iuramentum de astu sit prestandum. Et an per provocantem et provocatum. An per alterum et per quem. Et iuramentum de astu de hoc iudicio idem est quod iuramentum de calumpnia in iudicio contentioso fore civilis vel ecclesiastici. et videtur quod utroque iurare debeat. Nam iuramentum de calumpnia prestat in iudicio contentioso per actorem et reum ut l. l. i. et ii. C. de iuramento calump. et auctor. principales eo. ti. c. r. per totum. Ergo hic a simili cum sit eadem ratio et sic eadem ratio dispositio. ff. ad l. aquil. l. illud. C. ad l. falci. l. ultima de consti. tral. acto cum il. Solutio hic fuerit opi. varie attento iure lombardo una fuit opi. et fertur quod fuit mantuanorum quod in hoc iudicio duellari prestat iuramentum de astu. ab utroque tamen ab actore et a reo. Et sic secundum eos corriguntur omnia iura loquencia de astu. non prestando. adducunt quod habentur in lombard. qualiter quis se defendat. l. metho. Sed illa lex habet quatuor intellectus. unus quod intelligatur in testibus contrariis ut potius fiat duellum quam perirent. Secundus quod intelligatur in duobus contendentes se possidere ut potius duellent quam decerent. Tercius quod intelligatur in eo contra quem iuratum est quod furtus commisit. et ille nolit iurare per trarium. Quartus cum duo litigant contra iudice et unus iuravit delato iuramento et alter nolit iurare contrarium. Hocem sententia reprobari videtur quod non est hoc canon. tam iure iuramento contrarium ex parte rei. ut solus actor iuret ut in lombard. qualiter quis se defendat. l. si quis alium astu. Fallit ubi sit duellum propter contrarietatem testium ut in lombard. de testibus. l. si. et qualiter quis se defendat. l. si quis cum altero. Secunda fuit opi. car. beneventanum qui nolit distinguere an quis veniat ad duellandum in causa ipsius tota iter contingente. aut propter aliena. Aut principaliter aliena. secundario sua.

In primo casu utpote cum quis provocat aliquem super furto vel incendio sibi facto vel ad alterius uxoris suae. tunc refert aut provocatum ipsam dicit se commisisse. aut dicit suspicose quod commisit primo casu de iurare deesse esse ita esse. secundo casu debet iurare quod iustam habet suspicionem. et cum provocat ratione suspicionis debet adicere causam suspicionis ut pote quod ipse videtur loqui cum uxore sua et sic et alia. Qui autem provocat ad duellum contra aliam. non propter aliquod commissum contra se sed propter illi ut pote super crimine cum provocat super crimine lese maiestatis tunc cum accedat ut testis debet iurare sic esse ut prestat iuramentum

testis ut. C. de testi. l. si iurandi de testi. c. tuis et c. cum vicini cum sy. et dicit in reo ut iuret rem sic non esse. Dec. opi. quoad sacramentum rei reprobat ut. s. prima. Tertia fuit opi. et fertur fuisse populi videlicet quod ex parte rei et provocati nullum prestandum debeat.

Sed ex parte actoris de actore probat in lombarda qualiter quis se defendat. l. si quis astu. De reo probat. Nam reus tenetur ad alterum duellum vel pugnare vel renunciat et condempnetur. Sic igitur iuramentum pro parte rei nihil operatur et sic ut supra re secundum ut l. amplius. 6. in rebus et testibus. C. de appell. l. non cogendum. 6. fabinus. ff. de pcur. Quarta fuit opi. et fuit cuiusdam alberti qui nolit dicere quod actor tempore iurat potest in crimine lese maiestatis et testibus contrariis et in iusticia predicti. In reo probat cum aliis propter cum populi et hoc credo i actore ut quod regulariter probet propter in casibus supradictis et est ratio ut compellatur reus se purgare non precedente aliquo iudicio contra eum immo volunt iura ad minus precedere iustitiam et deficientibus probationibus exponitur purgationi de purgatione canonica. ii. q. iii. per totum de accusat. qualiter duo ut ibi nota. Sic igitur iure lombardo quo duellum permittitur in casibus enumeratis ad minus ex parte actoris prestat iuramentum et iuramentum debet esse eo forme probationi ut provocat de rei existentia sic etiam iuret ut etiam omnia notatur inter iuramentum calumpnie et veritatis ut unus de credulitate aliud de veritate ut dixit dominus Karolus.

Capitulum cxxx.

In reo autem non concipio rationem necessitatis iuramenti.

An dato campione uni parti in casibus a iure permisso sit licitum dare alteri.

Secundo quero nunc si alicui partem datur campio in casibus permisso a iure lombardo qui sunt octo ut. s. notum an tunc liceat alteri parti dare campionem. Solus. hic fuerunt opi. varie. Aliqui dicunt quod sic allegant quod habetur in lombard. qualiter quis se defendat. l. quocumque. Fallit in casu ubi sermo contendit contra dominum. Secunda fuit opi. quod alteri parti non liceat tunc est ratio.

Nam lex tunc in tribus casibus permittit ergo conegat in aliis. ff. de leg. l. uno singulare ff. ad municipal. l. i. ff. sol. mat. l. si cum duobus C. de pcur. l. marito de translat. pda. inter corporalia cum similibus. Ego credo hoc ponderandum quod in hoc refert hoc iudicium duelli a iudicio contentioso. Nam in iudicio contentioso regulariter quis per alium litigat et propter hoc innotuit est procuratoris usus. ff.

de procurat. l. i. 7. l. i. ff. Sed in duello regulariter solum per se 7 in hoc equiparatur iudicio criminali in quo non intervenit procurator nisi ad causas cause allegandas. ff. de pu. ludi. l. pe. §. qui ad crimen. 7. l. l. servus quoque §. publico. ff. de procur. 7. ca. licet 7. ca. uenias de accu. Et est ratio quod in personam procurator non potest ferri condemnatoria sententia. quod innocens in personam domini ratio. quod obiens. ff. de penis. l. absentem. Sic directio in duello. Nam in duello duellantes ad probationem personarum tendunt ut ex hoc elicatur veritas per hoc genus probationis 7 sic regulariter non intervenit campio preterquam in casibus premixtis. Si igitur emergat casus dandi campionis ex parte unius 7 non emergat ex parte alterius. ille solus dabit campionem. Si autem utriusque emergat casus utriusque dabitur nisi dicas propter equalitatem bincinde servandam ubi licitum uni det alteri ut. l. terminato. C. de fruct. 7. lit. expen. de mut. peti. l. i. 7. per totum. regula non licet de regul. iur. li. vi. 7. hoc sapit equitatem sed prius dictum verius de rigore iuris.

Capitulum c. lxxxi.

An campiones dentur equaliter ubi bincinde dandi sunt.

tertio quero qualiter in casibus bincinde cum conceditur campio fiet ipsorum datio 7 concessio.

Solo. hic pondero quod sicut per advocatos in foro contentioso causa personarum sic per campiones in iudicio duellari. Et sic infertur quod sicut in iudicio contentioso fieri debet equa advocatorum distributio ut. l. postulandum. C. de postu. Sic ubi bincinde fit campionum concessio fieri debet equa ipsorum distributio. In principalibus autem duellantibus non est ponderanda equalitas cum causam propriam propriis viribus corporeis sponte ad exitum perducunt.

An quilibet admittatur ad campionem.

Capitulum c. lxxxii.

Quarto quero an quilibet admittatur per campione. Solo ut dictum est. hic equipatur campio advocato. Sicut ergo quilibet admittitur ad postulandum nisi sit iurisperitus ut. l. i. ff. de postu. Sic quilibet admittitur ad officium campionatus nisi repellatur a iure. Repellitur autem fur ut in lombardis qualiter quis se defendat. l. campanionez. Et est ratio quod in famis. ff. de fur. l. non potest. Et sic succumbit presumitur ratione proprii delicti succubere 7 alii criminosis gravibus criminibus heretici ratione predicta.

Capitulum c. lxxxiii.

In cuius electione est duellum.

Quinto quero in cuius electione est duellum. Solutio regulariter in electione actoris sicut vicinus in iudicio contentioso. hoc habetur in lombardis. qualiter quis se defendat. l. si quis amō. fallit in crimine lese maiestatis ubi ex necessitate cogitur duellare. Et si aliquis dixerit egam ut in lombardis. de pu. cri. l. si. 7. d. in iuribus mulierum. l. ii. Pondera etiam quod predicavit bal. in. c. i. d. pace tenenda i. ix. col.

Capitulum c. lxxxiiii.

Qualiter debeat ordinari.

Sexto quero qualiter debeat ordinari duellum. Solo iure non est cautum sed consuetudine factum quod eligatur locus amplius in civitate vel extra quilibet locus circumscribatur cordis. Ita misso banno nullus audeat intrare preter duellantes nec audeat tumultum facere propter quem altera pars offendi posset. Et iudex erit ibi in loco ex quo videre possit utrumque duellantium 7 qualiter unus alius recipiat ut finaliter iudicet in duello. An quis succubuerit. Pondera ea que hic dicuntur per prozum meum quis sunt memoria digna 7 verum predicat dicens hic servari consuetudine. Nam ita videtur observari ymoles.

Capitulum c. lxxxv.

Quibus armis debeat duellari.

Septimo quero quibus armis debeat duellari. Solutio iure lombardis. permittuntur spatia fustes ut in lombardis. de testi. l. si quis cum altero 7 qualiter quis se defendat. l. mentio 7 hoc debent esse equalia 7 a iudice prestari.

Capitulum c. lxxxvi.

An si arma frangantur vel cadant debeant alia dari vel sublevari.

Octavo quero quid si arma seu fustes unus duellantis frangatur vel cadant. An debeant alia dari. Et videtur quod sic. nam dicit textus quod pugna debet fieri cum fustibus 7 scutis ut in lombardis. qualiter quis se defendat. l. mentio 7 in lombardis. de testi. l. si quis cum altero sed nisi alia darentur non fierent cum fustibus ergo. Confirmatur. Nam fustes in duello equiparantur testi. 7 instrumentis in iudicio contentioso. sed in foro contentioso fit

multiplicatio pductionis testis et instrumentorum etiam si aliquorum dicta frangitur ante publicationem et noticiam dictorum ut in aut. de testi. §. si vero de testi. fructus et de. de testi. e. ti. Quidam hoc tenet in frangente secus si cadant quia tunc debet imputari fortune. Alii dicunt quod in nullo casu sunt prestanda sed imputari debet fortis sue. Alii dicunt stari consuetudini. Super hoc ego credo opinari secundum fore veram. scilicet quod non sint alia prestanda siue cadant siue frangant nisi aliud habeat consuetudo que operari potest effectum ut dicit lex. ff. de legi. l. de quibus. C. que sit lon. consue. l. ii. xi. di. consuetudis l. di. consuetudo. Et est ratio. nam in duello ut dixi in principio tractatus queritur aliquando quod contra naturam ut quod minus fortis et minus industrius vincat fortiores. et magis industrius quod aliquando contingit casu incidente ergo uterque duellantium dimittendus est subiectioni casui quibus se libere compulerunt alias transirent. nam de illi ad purgationem indicii. Confirmatur nam si diceremus dare nova arma ubi caderent. sic a simili diceremus duellantem cadentem subleuari quod est absurdum. Nam propter hos casus aliquando contingit potentior rem succumbere et in hoc monstratur iudicium diuinum.

Capitulum c lxxvii.

Quis prius percutere debeat.

Quo quero quis in duello percutere debeat. et videtur quod pro casu. nam hoc iudicium duellum est si nullis iudicio contentioso ut. §. tactum est sepius. sed in iudicio contentioso actor proio porrigit libellum reo et postea reus porrigit responsiones ut in auten. offeratur C. de lit. contest. et ca. l. de libelli obla. ergo a simili provocans primo percussit provocatum In contrarium videtur quod reus favorabilior est ut. l. arimmo. ff. de act. et obli. et regule la favorabiles. ff. de regulis iuris. Regule in per. de regulis iuris li. vi. Sol. credo primum partem veram nec obstant allegata in contrarium quod illa tara loquitur in finibus iudiciorum cum si restat nisi in diffinitiva sententia quod tunc faciendum est reo. Sed circa principia faciendum est actori ut. l. si quis in tentione ambigua. ff. de iudi. et l. inter stipulantes. §. l. ff. de ver. obli. vel dici potest quod hic non est servandus ordo sed locus est prementioni vel etiam concursui. Pondera quia hic que dicuntur per prosum meum iure non probantur itaque ergo ad consuetudinem quam medianter servaretur ultima opinio. prosum mei. et ita mihi servari in contingentiis facti.

Capitulum c lxxviii.

An si terminari non potest uno die alio potest finire. Huc maria gracia plena do.

Ecimo quero. An si duellum terminari non possit prima die possit ad sequentem differri.

Solutio. Dico quod sic hic enim do nec finitur instaurandum est. Tu potest dicta per bal. in. c. l. in ti. de pace tenen. in ix. col.

Capitulum c lxxix.

An succumbens debeat in expensis componi.

Undecimo quero. Numquid succumbens in duello debeat in expensis condemnari adversario. Sol. ad similitudinem iudicii contenti

osi quo victus victori condemnatur in expensis ut. l. pperandum. §. si autem. C. de in di. et l. terminato. de fruc. et lit. expensis et c. finem de dolo et contuma. et c. calumpniarum de penis. Posset sic in duello dici victus victor. et c. Tu pondera quod forte non esset le. ne dicere quod non debeat in expensis condemnari maxime cum iuraverit de actu ut supra tetigit dominus paupers meus et fuerit quasi condemnatus ex presumptionibus. scilicet ex duello

Nam iudex debet esse mitis quando potest dicitur ex presumptionibus fm bal. in aut. generaliter. C. de epl. et cleri. in fin. col. ergo.

Capitulum c lxxx.

An succubens puniatur pena talionis.

Decimo quero. An provocans in duello succumbens puniatur pena talionis. Sol. Ad similitudinem iudicii criminalis con-

tentiosi ubi imponitur pena talionis accusati succumbenti ut. c. super his de accusac. et c. licet. e. ti. et l. si. C. de accusat. sic in duello cum duellatur propter crimen puniendum ad publicam vindictam.

Capitulum c lxxxxi.

An succumbens possit de eodem accusari in iudicio contentioso.

Undecimo quero. An provocans ad duellandum propter crimen succumbens et condemnatus possit de eodem crimine accusari in

iudicio contentioso. Solutio. Posset dici quod cum iure civili duellum purgatorium non approbatur immo penitus improbetur ut. l. una C. de gladiato. li. xi. et iur. canonico ut de pugna in duello et purg. vol. p. totum et et i. p. r. r. r. §. fuit tacti hec diffid. l. scriptura peret pluri cum iuridice discessionem. Et sic non obstat quod de delicto eiusdem sepius non sit querendus

ut. l. licet in fi. ff. nau. cau. sta. 7 ac. de bis de
accusatio. qz illa iura loquuntur cum prior ex
aminatio 7 discussio sint iuridica. Et sic in
fertur qz absolutoria lata in duello non parit
exceptionem rei iudi. accusare uolenti in iu
dicio contencioso. Hec uera nisi consuetu
do regionis aliud induceret ut uidelicet ser
uaretur ius lombardorum secundum cuius di
spositionem persecutus sum hunc passum. Et
sic limitate sunt solutiones precedentium q
stionum. Tu pondera qz ea que hic narratur
per dominum prozum meum decidunt que
que per eum tanguntur supra proximo capi.
quasi non sit locus in scriptiōni nisi ex con
suetudine seruaretur ius lombardorum.

Capitulum c lxxxii.

An desistens a duello incidat
in turpillianum.

Quarto decimo quero. Nunquid
prouocans ad duellum propter
crimen publicū desistens a duello
incidat penam turpill. Et uidet
qz sic ad instar criminalis iudicii contentiosi
ut. l. i. §. si quis autem. ff. ad tur. So. iure coi
si pcedez qd cū iu. co. sit rpbū hoc iudicii
ut. d. 83 quo iure pmissi posset dici ex eadē
equitate ipsum puniendum. 7 dico arbitrio
iud. cum nō sit iure expressis de officio de le.
c. de causis in fi. ff. de liberan. l. i. In penam
enim turpill. non credo ipsum incidere cū pe
ne sint restringende ut. l. cum quidam. ff. de
li. excep. 7. §. pene. de pe. di. i. regula in peis
de regu. iuris li. vi. hec ut dixi iure lombar
do procedunt. Nam iure comuni recedens a
duello non punitur pmo talis legi obtem
perat 7 prosequens facit contra leges.

Capitulum c lxxxiii.

An possit desistere cum licet iudicio

Quinto decimo quero. Nunquid
prouocans ad duellum iure lom
bardo possit desistere cum licen
cia iudicis appareat qz sic ad in
star accusantis impetrantis abolitionem. ff.
ad turpillianum. l. abolitio 7. l. si quis inter
ueniente 7 l. demiciamus. C. de abolitio p
totum. Solutio iure comuni hoc claret
quia sine abolitione potest 7 bene facit iure
lombardo. Credo etiam qz iudex ex causis q
cedere potest ad instar accusatoris ut supra
allegatum est. Tu pondera qz idem tenet
bal. in capitulo primo de pace tenenda.

Ultimum capitulum.

An prouocans desistere possit ante
litem contestatam sine pena.

Exto decimo quero. An prouo
cans ad duellum desistere possit
sine pena ante litem contesta. 7
cum etiam quero quando propo
sitiōis sicut i iudicio pteēt. i. duello lis dicat
contestari. Et uidetur qz ante possit sine pe
na desistere. nam ante lit. contest. non dicit
qz agere s; agere uelle rē ra. ba. l. hoc apli. er
go an desistere nō poterit. Cōfirmatur nā aff
lit. contest. desistenti pcur. ff. de in ius vo.
l. quis ergo. Confirmatur p. l. si metu. C.
de adulter. 7. l. miles. §. locer. ff. e. ti. 7. l. qsi
tum. ff. ad turpill. In contrarium facit. l.
In senatus. §. qui post. ff. ad turpill. ubi pbat
tex. qz desistens ab accusatione ante lit. con
test. incidat in turpill. Idem pbat. l. per. C.
de calump. Solo. Hec questio presupponit
decisionem alterius questionis. i. quando lis
pporționaliter dicatur contestari in hoc iu
dicio duellari uidet qz post unam pcurfionez
actoris 7 aliam rei quia in iudicio contencio
so sic sit contestatio per petitionem 7 contra
dictionem secutam ut. l. rem non nouam. §.
patroni. C. de iudi. 7. l. una. C. de lit. contes.
7. l. una. e. ti. c. 7. Sed prima percurfio ha
betur loco libelli. Secunda que fit a reo
est contradictio ergo sic fit lris contestatio.
Contrarium crediderim uidelicet qz fiat li
tis contestatio cum prouocat asserendo quod
crimen cōmiserit 7 ille negat qz hoc sic uerū
patet. Nam post litem cōtest. prestatur sacra
mentū de calumpnia in aut. ut liti. iu. in me.
lit. in prin. 7. l. li. C. de iura calump. Sed
duellantes post hanc vbiālem prouocationez 7
contradictionem iurant vbiā ut supra dic
tum est. Incipit ergo duellum a vbiāli prouo
catione sed percurfiones habentur loco pbat
ionum p testes 7 instrumenta que sunt post
lit. cont. ut lit. non cont. per totum. Et sic
modifica solutionez questionis quā quēui qz
primo percutere debeat. Hac solutione p
missa principalis questio incidat in questōem
illā. An pena turpill. uendicet sibi locum ante
lit. contest. 7 glo. sunt contrarie vna est in. l.
miles. §. locer. ff. de adult. 7. luit bu. 7 tenet
qz non incidat. Alia est in l. i. C. ad tur
pill. Et fuit azonis qui tenet qz incidat 7
illam credo ueram p. l. In senatus. §. qui post.
ff. ad turpill. Et per autentica qui semel. C.
quomodo 7 quando iudex. Tamen dicit
pe. qz accusator penitere potest anteqz reus
citatus ueniat. Sic intelligit. l. questum
ff. ad turpill. Et simili modo habetur solutio
pmissae questionis loquendo de iure lombar do
ut supra. Tu post tractatum pondera qd
in federici constituto. sub rubrica de prestando
iuramento a campionibus cautur qz postqz
campionēs circulum pugnationum fecerunt
prout est moris ingressi corporalia subeant sa
cramenta iuxta probabilem credulitatem eo
rum credunt dominos pro quibus pugnam in
trauerint ueritatem seruire 7 leuare omni sta

esse pugnatores pro dominis suis nec possunt
paci ei q non dimicabant tali 7 tali modo
paci dentibus. Sed ad confusionem alterius
alter ex toto posse conetur de quo uidet bal.
in .c. i. de pace tenen. in .x. col. Et pondera
quia in sequenti .c. ponitur de pena falsi cam
pionis 7 q dominus uictus p penas falsi cam
pionis pot in integram restitui sicut si esset
uictus per falsos testes. Item q falso campio
ni qui scilicet decernerit debet mutilari man
us iure comuni deberet puniri pena qua
fuisse punitus reus de crimine intentato. l.
l. post prin. ff. de fidei. Item pondera q
fridericus in quadam constitutione que in
cipit consuetudinem .dicit q si miles fuerit
is qui ad pugnam impetitur et equos se uolue
rit defendere. Aliter facias eius qd miles si
non sit equos simpliciter cum impugnet.

Et econuerso si pedes fuerit qui defende
re nititur licet is qui pugnam obtulerit fue
rit miles. non ut miles sed ut quilibet pugil
alium locatum impugnet. 7 hoc uidetur p
bari per textum ibi defendentis. Nam debet
esse electio qualiter melius se defendere ua
leat. Et pondera q eodem in loco osten
ditur q habens duos oculos si prouocat ad
duellum habentem unum oculum tantum de
bet unus oculus ei claudi. Et idem indigi
tis 7 aliis in membris ut ibidem. Et pon
dera q ille qui tetigit sexagesimum annum
uel est minor .xxv. ann. pro se pugnare mini
me tenetur. Sed pro sui defensione possit po
nere campionem. Uide bal. in ca. primo in ti.
de pace tenenda. Paulus de Lignano hu
ris utriusq Doctor.

Explicit tractatus de Bello Compila
tus per me Johanne de Lignano minimi hu
ris utriusq Doctorem In studio Bononien
si .m. ccc. lx. precedente festi exercitii con
tra Civitatem qui causam dedit tractatui ut
Scholaribus causa foret exercitii Doctorum
autem publicaretur correctioni. Deo gratias
7 uirgini gloriose eius Mari sanctissime .
eius sponse Katherine tocius celesti curie.

FINEN.

TABULA.

TRACTATUS JOSE.

De bello prima sui diuisione di
uiditur in tres partes pncipal
pales Quorum ultima in sex
tractatus diuiditur 7 subdivi
ditur prout tibi per tabulam istam clarius
demonstratur rubricellis suis suo ordine col
locatis

Prima pars principalis. Quid sit bellum.
7 qualiter describatur.

Secunda pars principalis de diuisione
belli 7 qualiter diuidatur.

Tertis 7 ultima pars principalis ponit co
dinem tractatum. Et diuiditur in sex prin
cipales tractatus.

Primus tractatus de speciali bello celesti.
Qualiter bellum speciale celeste est inuentu
7 mensura specialis humani belli de naturali
deductione ipsius belli componit celestium
ad bella terrestria.

Qualiter secundum Astrologos 7 natu
rales phis necessario sit dare bellum.

Secundus tractatus.

De spiali humano bello .fm theologiam.

De spiali humano bello fm moralem phis

Tertius tractatus.

De uniuersali corporali bello. Et iste diui
ditur in sex tractatus.

Primus Qualiter iure gentium habuerit
ortum bellum uniuersale co. potale.

Secundus tractatus tertii principalis .l.
quibus licet bellum indicare uniuersale.

Quibus primo 7 principaliter 7 quo iure
7 contra quos bellum liceat indicare uniuersale.

An aliis a prin. liceat bellum indicare uni
uersale.

An bellum motum p Imperatorem contra
ecclesiam sit iustum. Et an teneantur subditi
in hoc obtemperare.

Quid econtra iuris sit cum Papa bellum
mouet contra Imperatorem.

Tertius tractatus tertii principalis .l. que
sunt aggregatus belli.

De legione 7 cohorte 7 q 7 quot necessio
in eis requirantur.

Qualiter milites se habere debeant 7 cui
obediant 7 a quibus obstinere precipiuntur.

Que ptineant ad officiu ducis belli.
Qualiter uarie puniuntur milites p ut na
rie delinquit.

De fortitudine 7 ipsius natura 7 que for
tudo dicatur moralis 7 que no. que bellus
ducit ad finem rectum 7 que non.

An fortitudo sit uirtus cardinalis
vi. 7 generaliter uirtutes huius principales di
cuntur morales.

Quid sit uirtus.

De triplici specie boni et generaliter. III.
cardinales virtutes eliciantur a bona.

Quo et quiter quis in bello possit dici fortis

Quis sit principalis actus fortitudinis.

Quot generibus fortitudinis quis utatur
in bello.

An fortis in bello debeat potius expecta-
re mortem quam fugere.

An milites una cum comitibus suis virili-
ter in hostes prorumpens et ipsos totaliter con-
fringens contra mandatum iudicis sit capite puni-
endus.

An duci bello capto ab hostibus sit venia
concedenda.

Quartus tractatus tertii principalis. Et
dividitur in duas sui principales partes.

Prima pars. quod teneatur ad bellum accedere.

An a domino moto iusto bello teneatur
vasalli ad bellum accedere propriis expensis.

An subditi aut barones mouenti guerram
contra regem suum teneantur iuvare ipsum
abronem contra regem.

An subditi uni baroni mouenti guerram
alteri baroni teneantur ipsum primo vel re-
gem mouentem guerram alteri regi iuvare utri-
usque mandato uno concurrenti recepto.

An vasallus non ligatus domino
utrumque vel alterum et quod iuvare teneatur.

An vasallus teneatur iuvare dominum
contra patrem vel patrem contra filium.

An civis duarum civitatum teneatur iuvare
unam contra aliam.

An vasallus vocatus a domino teneatur
ipsum sequi in partibus ultra maris ad per-
gendum contra barbaros.

An servi ubique teneantur sequi dominum ad bellum.

An liberi vocati sequi teneantur patro-
num ad bellum.

An agricola vocati teneantur sequi domi-
num ad bellum.

An confederatos seu colligatos possit domi-
nus provocare ut ipsum iuvant in bello.

An subditi et qui ratione iurisdictionis
tantum teneantur ad bellum accedere.

Si pars secundus de personis non astrictis ad
bellum libere accedentibus dividitur in sex
principales partes.

Prima pars de libere accedentibus.

An libere accedens obliget sibi illum in
servitium vadant si dampna inde patiuntur.

An comodarius teneatur comodanti e
quos arma in bello depediti restituere.

An provocans contra spoliatores provo-
cati ad bellum accedentis agat ut bonum rap. ut
furti.

An non vocati sed proprio motu acceden-
tes ad bellum obligent sibi illum in cuius ser-
vitiu vadunt.

An non vocati sed proprio motu acceden-
tes ad bellum et viriliter profluentes obligent
sibi cum illum in cuius servitium vadunt re-
nuntiem et contradicentem.

Secunda pars de accedentibus qui tene-

tur ad antidota.

an talis agat contra illos qui tenent

Tertia pars de accedentibus propter glori-
am consequendam.

An tales obligent sibi illum in cuius ser-
vitiu vadunt.

Quarta pars de accedentibus qui loca-
verunt operas suas.

An tales agant contra conductorem.

Quinta pars de accedentibus animo spo-
liandi.

An talibus actio competat.

Sexta pars.

An clerici ad bellum accedere possint.

An stipendiarii in Alemania constituto
salario per ducentem agant contra eum qui
dum venirent amiserit totaliter statum suum.

An stipendiarii assumpti in Alemania per
civitatem Italiam constituto salario per an-
num qui dum venirent civitas violenter oc-
cupata est per tyrannum agant ad salarium in
totum vel pro rata vel ad quid.

Quando solvi debeat stipendiariis an in
principio mensis cuiuslibet anni an in fine.

an stipendiarii se absentantes etiam de li-
centia domini aliquo tempore perdant salari-
um pro illo tempore.

an stipendiarii qui culpa fuere noluit toto
tempore firme sue perdat stipendium totius tem-
poris an tantum pro tempore quo non fuerunt.

an stipendiarius servare possit per substituta
tamen.

an stipendiarius perdat stipendium tempore
quo infirmatur.

Quintus tractatus tertii principalis. scilicet de
spoliis et captivis qui fiunt in bello.

an capiens in bello efficiatur dominus pro-
prie capte et rei et an sit locus postliminio.

an capti in bello duarum civitatum effici-
antur servi et dominum eorum queratur.

an capti in bello efficiantur captivum.

an in bellis licitum sit insidiis uti.

an consecutus in bello totam suam inter-
esse possit iterum adversarius in iudicio con-
venire vel bellum iterato contra eum indicare
an morientes in bello salventur.

an pro rebus et possessionibus ecclesie compelli
bello bellare liceat et super hoc milites con-
vocare.

an liceat episcopis ad bellum accedere sine
licentia pape.

an prelati pro temporalibus que tenent ab
Imperatore teneantur solvere tributum pro bel-
lo ab eo indicto.

an capto in bello iusto sit misereendum.

an ecclesia debeat bellum indicare iudici.

an degentes in bello qui pugnare non pos-
sunt gaudeant in munitionibus bellencius.

an liceat prelati ratione temporalis iuris-
dictionis bella indicare ut eos interesse et ad
bellum alios certari.

an liceat prelato pro iuribus subditi sui in punita bellum indicare et alios q̄ iniurias in bello capere.

an delegatus pape possit indicare bellum. idest inuocare brachia secularia.

an bella iudicia per ecclesiam contra excommunicatos sint in excois.

Sextus et ultimus tractat⁹ terci⁹ p̄ncipalis per modum tabule scz quot sunt genera bellorum de quibus reperitur i iure expressum.

Quartus tractatus terci⁹ p̄ncipalis scilicet de bello particulari quod fit ob tutela sui et diuiditur in octo partes principales.

Prima pars.

Quid sit particulare bellum.

Secunda pars.

Quot sint species particulares belli

Tercia pars.

Quo iure inducitur sit particulare bellum

Quarta pars scilicet quibus liceat hoc particulare bellum indicare.

an clericus coepat hoc bellum indicare

an cum liceat clerico se defendere etiam occidendo hoc sibi liceat in ecclesia.

an liceat clerico celebranti inualo se defendere et occidere et sic continuato officio celebrare.

an baptisanti confirmanti et in ungenti ordinanti et similia sacramenta conferenti in uale licitum sit collationem illorum post ponere inchoatum.

an pericligenda sit mors in usu sacerdotis cum puerum in mortis articulo baptizat an uita eterna pueri ipsius ne sine baptismo concedat.

an monacho liceat se defendere sine licentia abbatis sui.

an harricis qui quandoq̄ p̄ leges municipi impune occidi p̄nt liceat se defendere

Quinta pars. scilicet contra quos liceat hoc particulare bellum indicare.

an liceat contra superiores suum.

an contra iudicem etiam si iniuste aliquid agat.

an filio contra patrem.

an monacho contra abbatem.

an seruo contra dominum.

Sexta pars scilicet pro quibus liceat hoc particulare indicare. Et diuiditur in duas partes principales.

Prima pars scilicet pro quibus personis liceat.

an liceat patri pro filio.

an marito pro uxore.

an p̄ fratre sorore et aliis cōiunctis personis.

an quis teneatur quem defendere ne ab alio occidatur.

an uasallus teneatur iurare dominum suum.

an seruus teneatur defendere dominum

suum.

an miles teneatur defendere spoliatum suum.

an uasallus uidens dominum iniuriam ex parte una patrem ex alia utrumq̄ pariter in mortis articulo nisi iuuentur nec iurare potest nisi alterum quem iurabit.

Quid iuris eodem thēmate retento in clerico qui uidens episcopum suum in uasum ex una parte patrem ex alia utrumq̄ pariter in mortis articulo nisi iuuentur nec iurare poterit nisi alterum quem iurabit.

Secunda pars scilicet pro quibus rebus liceat.

an liceat pro rebus iuste possessis.

an pro iniuste possessis.

an et si liceat res defendere defendens cum moderamine inculpate tutelae. Si occidet alias inuitat irregularitatem incurrit.

an pro rebus suis defendendis contra clericum excommunicationem incidat manus in laicando.

an pro rebus defendendis uocatio audiēdo licitum sit subsidium impendere.

an pro rebus defendendis licitum sit sic contra omnes uim ui repellere sicut contra quos licitum est pro personis.

an pro rebus depositis uel comodatis liceat uim ui repellere.

Septima pars scilicet qualiter liceat hoc particulare bellum indicare.

an liceat cum moderamine inculpate tutelae.

Quid sit moderamen inculpate tutelae et que in eo requirantur.

an liceat uili et debili cum ense se defendere contra fortem et robustum percutientes tantum pugno.

an et si liceat in continenti se defendere qualiter intelligatur in continenti.

Qualiter intelligatur equivalentia in ipso actu uolento.

an uindictasse uideatur non defendisse si spoliatorum meorum de possessione mea expoli qui ante satisficere uolebat de possessione restituerenda.

an paratum ad me percutiendum expectare debeam uel cum preuenire.

an miles quem uicinus aggreditur cēteatur uim ui repellere si expectat et percutiat cum cum alis fugere possit.

an si vulneratus post vulnera illata insequitur vulnerantē et ipsum percutiat q̄ tñ non licet puniri debeat ut dolosus uel ut culpabilis.

an uolentia illata persone possit p̄ amicos p̄pulsari sicut illata rebus.

an seruus de mandato domini sui uxorem interficiens excusetur.

Octaua et ultima pars quarti tractat⁹ terci⁹ p̄ncipalis.

Quid sit finis particularis belli.

Quintus tractatus tercii principalis
scilicet de particulari bello quod sit ad dese-
sam militi corporis et repelalie nuncupantur
Et diuiditur iste tractatus prima sui diuisione
in duas partes principales.

Prima pars.

Unde et a quo ortum habuerit repelalie

Secunda pars scilicet de causis repelaliaz

De causa productiva sive efficiēte repelaliaz

Tercia pars scilicet de causa materiali. Et di-
uiditur in quatuor partes principales.

Prima pars de materia in qua.

Quid sit materia in qua.

Quid sit materia circa quam.

Quid si de materia ex qua

Quibus personis concedatur facultas
repelaliarum.

An in colles repelalie concedantur.

An ciuibus non subiectis iurisdictionis
ciuitatis et aliis non facientibus factiones
sint indicende repelalie.

an cum per conventionem concedan-
tur repelalie contra ciuitatem originis.

an cuiuslibet et habitis pro ciuibus limi-
tate tamen repelalie concedantur

an ciuibus unius ciuitatis per pacto vel
statuto tractantur ut cives per eandem co-
cedi possint repelalie.

Secunda pars de materia circa quam.

An contra res eorum qui capi possunt
uigore repelaliarum possint indici repelalie.

An repelalie simpliciter indite exer-
ceri possint contra bona existentibus inter-
ritorio ciuitatis contra quam sunt indite
ut capiantur et reducantur interritorium ci-
uitatis indicentis.

An si una ciuitas indicat repelalias con-
tra aliam possit rector ciuitatis indicentis scri-
bere rectori ciuitatis contra quam ut exerce-
at repelalias in rebus ibi sitis.

Tercia pars de materia contra quam

An repelalie indite per unam ciuita-
tem contra homines alterius ciuitatis exer-
ceri possint incolis illius ciuitatis.

An repelalie indite per unam ciui-
tatem contra homines alterius ciuitatis ex-
ceri possint contra homines illius ciuitatis
alibi commorantes.

An repelalie exerceri possint contra
cives vel incolas unius ciuitatis onera subea-
tes eiusdem qui etiam sunt ciues alterius ciui-
tatis.

An contra mulieres exerceri possint
repelalie.

An contra clericos non coniugatos.

Item et an contra coniugatos exerce-
ri ualeant repelalie

An episcopo negligente de clericis suis
iusticiis facere nec haberi possit recursus ad
superiorem possint indici repelalie contra cle-
ricos eodem per iudicem secularem.

An contra bonos vel etiam alios studē-

tes bonos cunctes padue pro studio exerceri
possint repelalie.

An contra ambassiatōes exerceri pos-
sint repelalie

An contra cunctes ad mundinas ad fac-
tum iacobum vel ad alium locum indulgētie.

Item an contra nauigantes et an con-
tra illos qui uocari non possunt et in multis
aliis casibus ualeant exerceri repelalie.

An contra bonos potestatem mediola-
ni ibi iniusticiam facientem possint cōcedi re-
pelalie

An contra offi. potestatis vel rectoris
iniusticiam facientis possint indici repelalie.

An contra consules priores ciuitatis
iusticiam facere denegantes possint indici re-
pelalie.

An contra singulares personas penit?
innocentes propter delictum domini vel al-
terius puniati de quo non sit iusticia Si dici
possint repelalie.

An contra certum genus hominum fa-
cere iusticiam denegantium indici possint re-
pelalie.

Quarta pars. scilicet de materia ex qua que
insurgit ex defectu iurisdictionis quia primo
requiri debet iudex antequam repelalie procedat.

An requiri debeat iudex ut iusticiam
faciat antequam repelalie concedantur.

An iudex iniuriarum patientis qui non
audet litigare in ciuitate iniuriam inferētis
possit scribere ut in alios iurisdictionem pro-
get ne arbitros eligat.

Quis iudex requiri debeat ut iusticiam
faciat.

Qualis iusticia requiratur ut repela-
lie indicantur.

Quando dicatur non posse haberi co-
pia superiorum locus sit repelalioz indicti

Quarta pars principalis. scilicet de causa for-
mali. Et diuiditur in duas principales

Prima pars de forma indicendarum
repelaliarum

Quo iure concedantur repelalie.

Quis comparere possit ad impediendū
ut indicentur.

Que defensione competant illi contra que
petantur.

Qualiter constabit de iniusticia facta
vel denegata.

An si aliqua capiantur uigore repela-
liorum detineri ualeant ut ex primo decreto
an secundo.

Secunda pars scilicet de forma exer-
cendi repelalias.

An liceat illi cui sint concessę repela-
lie auctoritate propria vel per ministros con-
cedentis exerceri.

An personas et res captas teneantur ca-
piens iudici presentare vel sibi retinere.

An res capte uigore repelaliarum ue-
dantur vel insoluntur accipiantur vel exti-

mentur.

An quis debet seriatim possit repel-
las exercere.

An si quis vult se defendere ut res cap-
tas qualis cognitio adhibetur.

An exacto competat regressus contra il-
lum propter cuius debitum vel delictum exact.
est.

An exacto succurratur contra recto-
rem sicut contra debitorem principalem.

An captus ulgore repelalarum possit
auctoritate propria homines illius civitatis ca-
pere in qua captus fuit.

An per statuta repelalie concedi pos-
sint in casibus aliis a iure non permisis.

An statuta civitatis quo canetur qd si
quis teneatur p patre delinquentem possint ex-
ercei contra filium existentem extra territo-
rium civitatis

an per pactum possint licite fieri ut u-
nus teneatur pro alio.

Sextus et ultimus tractatus tertii pn-
cipalis totius operis scz de particulare bello
quod sit ad purgationem quod duellum nun-
cupatur. Et dividitur prima sua divisione in
vii. partes principales.

Prima pars.

Quid sit duellum.

Secunda pars scilicet quot sint spe-
cies duelli.

Qualiter duellum sit propter odii ex-
agerationem.

Qualiter sit duellum propter gloriam
in publico consequendam

Qualiter duellum propter purgatione
alicuius criminis.

Tercia pars scz quo iure sit introduc-
tum et quo inhibitum.

Qualiter duellum quod sit propter o-
dii exaggerationem sit introductum iure na-
turali sumpto pro instinctu nature provenien-
te ex sensualitate ad aliquid appetendum

Qualiter duellum quod sit propter o-
dii exaggerationem sit inhibitum iure natu-
rali sumpto pro rationabili intelligentia et sic
iure gentium et divino canonico et civili.

Qualiter duellum quod sit propter glo-
riam introductum sit iure naturali sumpto
pro instructione ex sensualitate proveniente

Qualiter duellum qd sit propter glori-
am sit inhibitum iure divino.

Qualiter duellum quod sit propter glo-
riam sit inhibitum iure gentium.

Qualiter duellum quod sit propter glo-
riam sit inhibitum iure canonico et
civili.

Quarta pars propter quid duellum pur-
gatorium sit permittum et propter quid in-
hibitum.

Qualiter duellum purgatorium inhibi-
tum sit iure divino.

Qualiter inhibitum sit iure gentium.

qualiter inhibitum sit iure canonico.
qualiter inhibitum sit regulariter iure
civili.

quinta pars scilicet in quibus casibus
permittatur duellum purgatorium.

Qualiter duellum purgatorium iure
lombardo in .xx. casibus permittatur.

Sexta pars inter quos iuri possit du-
ellum.

Qualiter duellum purgatorium inter
principales regulariter fieri debeat.

Septima et ultima pars. scilicet qualiter fi-
at duellum.

Qualiter duellum purgatorium ad in-
star sit iudicii contentiosi.

an iuramentum de astu inter duellantes
sit prestandum et per quem.

an utri parti campione dato in casibus
a iure permisis liceat etiam alteri parte dare
campionem.

Qualiter in casibus blinde /uz capio
conceditur fiet ipsorum datio et concessio.

an quilibet admittatur pro campione.

In cuius electione sit duellum.

Qualiter ordinetur duellum.

Quibus armis duellari debeat.

an si arma seu fustes unus duellantis
frangantur vel cadant debeant alia dari.

Quis duellantium potius percutere de-
beat.

an duellum primo die non finitum se-
quenti die terminari possit.

an in duello succubens i expens con-
tempetur.

an provocans in duello succubens puniat
pena talionis.

an provocans ad duellum propter crimen
succubens et condemnatus possit de eodem
crimine accusari in iudicio contentioso

an provocans ad duellum propter crimen
publicum delictens a duello incidat in penas
turpilli.

an provocans ad duellum iure lombardo
possit de licentia iudicis desistere.

an provocans ad duellum possit sine pena
ante lit. contest. desistere.

Item et quando in duello lis dicatur
contestari.

DED. BRAZIAS.

Impressus Bononie ad instantiam Sigil-
mundi de libris per me magistrum Henricum
de Colonia xvi. kl. Jasi. Anno a domini in-
carnatione Millesimoquadringentesimo sep-
tuagesimo septimo.

Laus Deo.

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